

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIANA JACOBS A/K/A KIANA TATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48823

FILED

AUG 14 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Wasado
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On March 1, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. No direct appeal was taken.

On October 24, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 8, 2007, the district court denied appellant's petition.¹ This appeal followed.

¹On January 22, 2007, the district court entered a second order denying the petition.

In her petition, appellant contended that she received ineffective assistance of trial counsel.² To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability of a different outcome in the proceedings.³ To demonstrate prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵

First, appellant claimed that trial counsel was ineffective because trial counsel failed to interview petitioner's witnesses. In particular, it appears that appellant identified the apartment complex

²To the extent that appellant raised any of the underlying claims independently from her claims of ineffective assistance of counsel, those claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁴Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁵Strickland, 466 U.S. at 697.

manager as a witness that trial counsel should have personally interviewed. Appellant failed to demonstrate that she was prejudiced. Appellant failed to indicate how a personal interview would have altered her decision to enter a guilty plea in the instant case. Appellant failed to set forth any facts that would have been elicited in a personal interview with the apartment complex manager, or any other witness, and thus, she failed to demonstrate a reasonable probability of a different result in the proceedings.⁶ Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that her trial counsel was ineffective for coercing her into remanding herself into custody prior to the sentencing hearing. Appellant further claimed that trial counsel coerced her family about the remand as well. Appellant failed to demonstrate that counsel was deficient or that she was prejudiced. Appellant failed to provide any facts regarding how trial counsel allegedly coerced either appellant or her family.⁷ Further, appellant failed to demonstrate that there was a reasonable probability of a different outcome in her decision to enter a guilty plea or the sentencing proceedings if she had not agreed to return to custody after her guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁷See id.

Third, appellant claimed that her trial counsel was ineffective due to inadequate communication. Appellant failed to demonstrate that she was prejudiced. Appellant failed to set forth any facts demonstrating that greater communication would have resulted in a different outcome in the proceedings.⁸ Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that her trial counsel was ineffective for informing her that it was too late to dismiss her counsel after she had entered her guilty plea but prior to the sentencing hearing. Appellant failed to demonstrate that she was prejudiced. Appellant failed to demonstrate that the results of the sentencing proceeding would have been different had she been represented by different counsel. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that her trial counsel was ineffective for leading her to believe that she would receive a single two to ten year sentence. Appellant failed to demonstrate that she was prejudiced. In the written guilty plea agreement and during the plea canvass, appellant was informed that the potential penalty for her offense was a term of not less than one year nor more than ten years. Appellant was further specifically informed that she would receive an equal and consecutive term for the use of a deadly weapon during the commission of her offense. Appellant further acknowledged in the written guilty plea agreement that she was

⁸See id.

not promised a particular sentence and that the district court had discretion to impose any sentence within statutory limits. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate her guilty plea as involuntary and unknowing.⁹ Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that her trial counsel was ineffective for informing her that counsel would correct mistakes in the presentence investigation report—in particular the dates of her psychiatric hospitalization. Appellant claimed that her mental state was overlooked at the sentencing hearing. Appellant further claimed that counsel failed to inform the district court that she stopped the interview with the Department of Parole and Probation because she was being treated disrespectfully. Appellant failed to demonstrate that she was prejudiced. Appellant failed to demonstrate a reasonable probability of a different result had trial counsel informed the district court of the correct dates of her hospitalization. Trial counsel did discuss the problems he had with the preparation of the presentence investigation report, and appellant failed to demonstrate that further discussion would have had a reasonable probability of altering the outcome of the proceedings. Therefore, we conclude that the district court did not err in denying this claim.

Seventh, appellant claimed that her trial counsel failed to have her competency evaluated. Appellant claimed that her trial counsel

⁹See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

was aware of her psychiatric problems because she missed a calendar call due to her hospitalization in August 2005. Appellant further claimed that her mother supplied trial counsel with her medical records showing that appellant had existing psychiatric problems. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. This court has held that the test for determining competency is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether [s]he has a rational as well as factual understanding of the proceedings against [her]."¹⁰ Appellant failed to identify the nature of her psychiatric problems, and thus, she failed to demonstrate that she was unable to consult with her counsel or that she did not have a factual understanding of the proceedings against her.¹¹ Appellant answered all questions put to her during the proceedings in an appropriate manner, and there is no indication in the record that she was in fact incompetent. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that excessive bail was imposed in the pretrial proceedings and that her pretrial detention was cruel and unusual

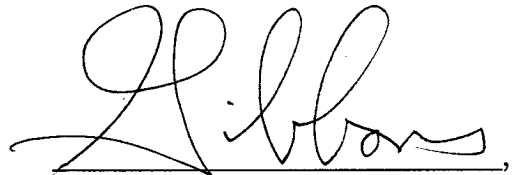
¹⁰Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting Dusky v. United States, 362 U.S. 402 (1960)).

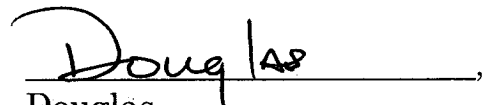
¹¹Although the presentence investigation report indicates that appellant was being treated for depression, a diagnosis of depression does not in and of itself demonstrate incompetency.

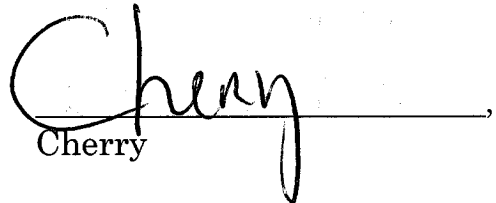
as she was placed in lockdown for twenty-three hours a day. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.¹² Therefore, we conclude that the district court did not err in denying these claims.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Cherry, J.

¹²See NRS 34.810(1)(a).

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Stewart L. Bell, District Judge
Kiana Jacobs
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk