

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JOY A/K/A KEVIN R. JOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48974

FILED

AUG 17 2007

HELETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On March 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery (Count 1), one count of attempted robbery with the use of a deadly weapon (Count 2) and one count of attempted first degree kidnapping (Count 3). The district court sentenced appellant to serve the following terms in the Nevada Department of Corrections: for Count 1, 12 to 48 months, for Count 2, 20 to 72 months, with an equal and consecutive term of 20 to 72 months for the use of a deadly weapon, and for Count 3, 32 to 144 months, with all counts to run concurrent and with 311 days credit for time served. No direct appeal was taken.

On September 20, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 6, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. 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 his counsel's performance fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.¹ The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.²

First, appellant claimed that his trial counsel was ineffective because trial counsel did not have a citation for a case supporting appellant's contention that appellant's attempted kidnapping charge was incidental to his robbery charge when asked for one by the court at the preliminary hearing. Here, the record belies appellant's claims as it is clear that appellant's trial counsel did inform the court of the name of the case supporting the proposition that the attempted kidnapping charge may have been incidental to the attempted robbery charge, namely Wright v. State.³ That argument notwithstanding, the district court denied appellant's request to dismiss the attempted kidnapping charge because it determined that there was sufficient evidence of an attempted kidnapping to allow the jury to determine, as a question of fact, whether the

¹See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

²Strickland v. Washington, 466 U.S. 668, 697 (1984).

³94 Nev. 415, 581 P.2d 442 (1978); see Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

kidnapping was incidental to the robbery. As a result, trial counsel's performance did not fall beneath an objective standard of reasonableness in the instant case, and the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective because he failed to make suggestions regarding appeals or habeas corpus writs. Appellant failed to demonstrate that he was prejudiced. Notably, the written guilty plea agreement correctly informed appellant of his limited right to a direct appeal. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective because he was unprepared at his "speedy trial" date and instructed appellant to ask for a continuance. Appellant failed to indicate how this impacted his decision to enter a guilty plea, and thus, the district court did not err in denying this claim.

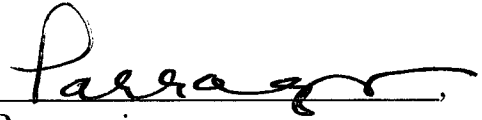
Finally, appellant claimed that there was insufficient evidence to support his enhancement for the use of a deadly weapon, insufficient evidence to support the charge of attempted kidnapping in the first degree, and that the attempted kidnapping charge was improper because the kidnapping was incidental to the robbery. 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.⁴ Further, by pleading guilty appellant waived any claims relating to the deprivation of constitutional rights that occurred prior to the entry of

⁴See NRS 34.810(1)(a).


his guilty plea.⁵ 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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

⁵Williams v. State, 103 Nev. 227, 231 737 P.2d 508, 511 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁷We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Eighth Judicial District Court Dept. 6, District Judge
Kevin Joy
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk