

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN ANGEL MALDONADO-CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49723

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
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. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On April 6, 2006, the district court convicted appellant, pursuant to a guilty plea, of assault with a deadly weapon. The district court sentenced appellant to serve a term of 13 to 60 months in the Nevada State Prison. No direct appeal was taken.

On March 27, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.¹ 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 May 30, 2007, the district court denied appellant's petition. This appeal followed.

¹Appellant filed an identical petition with the district court on April 30, 2007.

In his petition, appellant claimed 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 was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

Appellant claimed that his counsel was ineffective because counsel promised him he would receive probation. Appellant failed to demonstrate that he was prejudiced by his counsel's actions. Appellant was informed in the written plea agreement and at the plea canvass that, although he was eligible for probation, he was subject to a term of one to six years. Appellant further indicated that he understood that the imposition of sentence was within the discretion of the court. The record reveals that as part of the plea agreement, the State agreed not to oppose probation if the Division of Parole and Probation recommended probation. The Division of Parole and Probation did not recommend probation. At the sentencing hearing, although appellant's counsel argued for probation, counsel stated that appellant understood that probation was not likely. Because appellant was informed of the possible term he was facing and

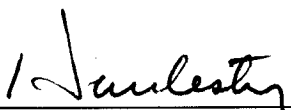
²Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

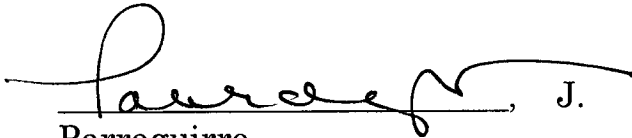
³Strickland v. Washington, 466 U.S. 668, 697 (1984).

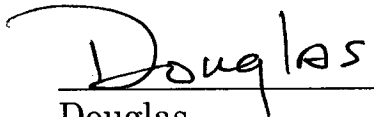
was informed that he was not guaranteed to receive probation, appellant failed to demonstrate that his counsel was ineffective. Therefore, we conclude the district court did not err by denying this claim.

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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Steven R. Kosach, District Judge
Juan Angel Maldonado-Cruz
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).