IN THE SUPREME COURT OF THE STATE OF NEVADA

JOE C. SUGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49775

FILED

JUN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; James M. Bixler, Judge.

On March 9, 2006, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder. The district court sentenced appellant to serve a term of 10 to 25 years in the Nevada State Prison. No direct appeal was taken.

On January 22, 2007, 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, the district court declined to appoint counsel to represent appellant. On July 18, 2007, the district court denied appellant's petition after conducting an evidentiary hearing. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective. 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.[1] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[2] "[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence."[3] Factual findings of the district court that are supported by substantial evidence and are not clearly wrong are entitled to deference when reviewed on appeal.[4]

First, appellant claimed that his trial counsel was ineffective for coercing him to plead guilty. Specifically, he claimed that his counsel stated that appellant faced a certain conviction because (1) appellant had been previously convicted of acts of domestic violence against the victim, (2) the victim had sought and the court had issued a protective order against appellant, and (3) appellant's name was on the lease to the victim's home. Appellant claimed that these representations caused him to misunderstand the nature of the charges and plead guilty despite his innocence. Regardless of what appellant's counsel informed appellant about the weight of evidence against appellant, appellant did not show that he was prejudiced by counsel's advice. According to the plea agreement, which appellant acknowledged that he read and signed,

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

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

[3]Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

[4]Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

appellant admitted that he pleaded guilty voluntarily absent any threat or promise outside of those contained in the plea agreement. He also acknowledged that his attorney discussed the nature of the charges against him and he understood them. Further, the district court informed appellant of the nature of the charges and appellant admitted that he killed the victim. Therefore, the district court did not err in denying this claim.[5]

Second, appellant claimed that his trial counsel was ineffective for advising him that he only faced a maximum of ten years imprisonment pursuant to the plea agreement. Appellant failed to demonstrate that he was prejudiced. The plea agreement, which appellant acknowledged that he read and signed, informed appellant that he faced a minimum sentence of twenty-five years imprisonment with the possibility of parole after ten years and a maximum sentence of life with the possibility of parole after ten years. Appellant further acknowledged during the plea canvass that he could be sentenced to either of the sentences set forth in the plea agreement. Therefore, the district court did not err in denying this claim.[6]

Third, appellant claimed that his trial counsel was ineffective for failing to pursue appellant's claim of innocence and permitting

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[5]To the extent that appellant claimed that his plea was involuntary because his counsel coerced appellant to plead guilty, the district court did not err in denying this claim for the reason set forth above.

[6]To the extent that appellant claimed that his plea was involuntary because his counsel advised him that he only faced a maximum sentence of ten years, the district court did not err in denying this claim for the reason set forth above.

appellant to enter a guilty plea when he knew that appellant was actually innocent. Specifically, appellant claimed that he informed his counsel that the last time he saw the victim was after they had gone to the movies at the victim's request. Further, when appellant learned that he was considered a suspect, he turned himself in to the authorities. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. A factual basis for the plea was established during the plea canvass when appellant admitted that he strangled the victim to death. As appellant admitted that he killed the victim, he failed to meet his burden of showing that he would have benefited from a more thorough investigation of appellant's initial statements to his counsel.[7] Further, appellant's assertions did not point to any evidence that could establish appellant's factual innocence.[8] Therefore, the district court did not err in denying this claim.[9]

Fourth, appellant claimed that his counsel failed to perfect an appeal despite his timely request that he do so. In support of his claim, appellant (1) submitted a copy of a letter he purportedly sent to counsel on March 3, 2006, which stated that he asked for an appeal immediately after

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[7]See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (providing that a petitioner asserting a claim that his counsel did not conduct a sufficient investigation bears the burden of showing that he would have benefited from a more thorough investigation).

[8]See Bousley v. United States, 523 U.S. 614, 623 (1998) (citing Sawyer v. Whitley, 505 U.S. 333, 339 (1992)).

[9]To the extent that appellant argued that his plea was involuntary because appellant's counsel failed to investigate appellant's theory of defense, the district court did not err in denying this claim for the reason set forth above.

his sentencing hearing and was renewing his request in the letter; (2) submitted the affidavit of his daughter, Natisha DeGourville, who averred that she was present at the sentencing hearing, heard appellant request that his attorney file an appeal, and later learned that no appeal had been filed; and (3) stated at his evidentiary hearing that he requested that his counsel file an appeal.

"[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."[10] "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal."[11]

Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel testified that appellant never asked for an appeal, nor did counsel receive any letter from appellant requesting an appeal. Further, Suggs's case file with the public defender's office did not contain the letter. The district court noted that appellant's testimony, the letter to counsel, and DeGourville's affidavit were unpersuasive in light of appellant's counsel's testimony and determined that appellant failed to demonstrate by a preponderance of the evidence that he asked his counsel to file an appeal. Substantial evidence supports the district court's determination.[12] Therefore, the district court did not err in denying this claim.

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[10]Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); see Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

[11]See Davis, 115 Nev. at 20, 974 P.2d at 660.

[12]Rincon, 122 Nev. at ___, 147 P.3d at 238 (quoting McKellips, 118 Nev. at 469, 49 P.3d at 658-59). We note that the district court also found that appellant did not demonstrate that he had any non-frivolous grounds

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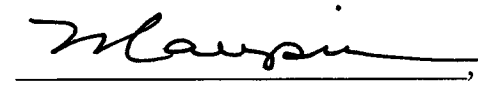
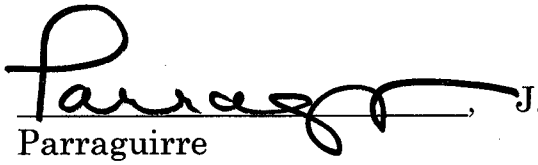
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



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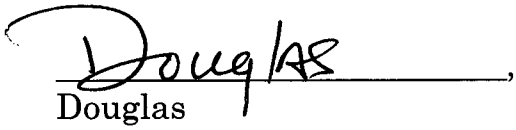

_____, J.
Douglas

cc: Hon. James M. Bixler, District Judge
Joe C. Suggs
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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upon which to base an appeal. While consideration of whether appellant had grounds upon which to base an appeal is not appropriate in determining whether he was deprived of an appeal, we nonetheless affirm based on the district court's specific finding that appellant did not request an appeal. See Kraemer v. Kraemer, 79 Nev. 287, 382 P.2d 394 (1963).

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