IN THE SUPREME COURT OF THE STATE OF NEVADA

COREYEAN JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50005

FILED

JAN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
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; Valorie Vega, Judge.

On June 13, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 26 to 120 months, plus an equal and consecutive term of 26 to 120 months for the use of a deadly weapon, in the Nevada State Prison. No direct appeal was taken.

On April 12, 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 3, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the district court abused its discretion in applying the deadly weapon enhancement because the enhancement required a factual finding made by a jury and he did not stipulate to the use of a deadly weapon. Appellant's claim fell outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea.[1] Therefore, we conclude that the district court did not err in denying this claim.

In his petition, appellant also contended that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice so severe that there was a reasonable probability of a different outcome in the proceedings.[2] To invalidate a judgment of conviction based on a guilty plea, a petitioner must show 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.[3] The court

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[1]See NRS 34.810(1)(a).

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

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

need not address both the deficiency and prejudice component of the inquiry if the petitioner makes an insufficient showing on either one.[4]

First, appellant argued that his counsel was ineffective because counsel knew that appellant was not properly certified as an adult and failed to raise this issue before the district court. The claim that appellant was not properly certified is belied by the record.[5] According to an order filed January 30, 2006, the juvenile court, after having a certification hearing and conducting a full investigation, found probable cause to believe that the appellant committed the crimes and further found cause to certify appellant to adult status. Accordingly, the district court did not err in denying this claim.

Second, appellant contended that his counsel was ineffective for not requesting appellant's guardians to testify as to appellant's competency or background at the certification hearing. Appellant failed to demonstrate prejudice. According to the order of the juvenile court, a full investigation was conducted.[6] No evidence in the record suggests that

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[4]See Strickland, 466 U.S. at 697.

[5]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[6]To the extent that appellant is arguing that his counsel was ineffective for not requesting appellant's guardians to testify at his sentencing hearing, we note that a defendant only has a right to call mitigating witnesses in first-degree murder cases. See 2003 Nev. Stat., ch. 366, § 1, at 2082 (NRS 175.552(3)); NRS 176.015.

appellant was developmentally or mentally incompetent to understand his situation and the proceedings of the court or to aid his counsel in those proceedings such that the juvenile court would not have certified him as an adult. Accordingly, the district court did not err in denying this claim.

Third, appellant argued that his counsel was ineffective for failing to suppress statements he made during police interrogation without the presence of a guardian or counsel. Appellant failed to demonstrate prejudice because he failed to show that a motion to suppress would have been meritorious. No statute requires the presence of a guardian during police questioning. NRS 62C.010(2)(a) provides that, if an officer takes a child into custody, the officer shall attempt to notify the child's parent or guardian, if known, without undue delay. However, as we recently clarified in Ford v. State, "the objectives of parental notification do not prevent juvenile interrogations in the absence of parental notification," and NRS 62C.010 does not require law enforcement to notify a juvenile suspect's guardians to obtain a voluntary statement from the juvenile, irrespective of the crime investigated.[7] In Ford, we further explained that the objective of NRS 62C.010 is to notify guardians when their child is in police custody; that this statute provides no remedy when police fail in this regard; that, under Shaw v. State[8] and Elvik v.

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[7]122 Nev. 796, 802, 138 P.3d 500, 504 (2006).

[8]104 Nev. 100, 753 P.2d 888 (1988).

State,[9] absence of parental notification is only a factor to be considered in determining the voluntariness of the juvenile's statements; and that NRS 62C.0120 "has no bearing on law enforcement decisions to interview juvenile suspects and only limited bearing on whether a juvenile's statement is voluntary."[10] Here, appellant did not argue that his statements were otherwise involuntary, that he requested to have his guardians present, or that the police failed to read him his Miranda rights.[11] Accordingly, there is no indication that his statements to the police were involuntary, requiring suppression. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel was ineffective for failing to investigate facts and being unprepared for trial. Appellant failed

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[9]114 Nev. 883, 965 P.2d 281 (1998).

[10]Ford, 122 Nev. at 802-03, 138 P.3d at 505.

[11]In Marvin v. State, 95 Nev. 836, 839 n.4, 603 P.2d 1056, 1058 n.4 (1979), we held that, absent extraordinary circumstances, police should always have a responsible custodian present during interviews of children. We noted in Ford, however, that this requirement had not been recognized as a constitutional right. 122 Nev. At 803 n.8, 138 P.3d at 505 (citing Stone v. Farley, 86 F.3d 712, 717 (7th Cir. 1996) (stating that there is no federal statutory or constitutional requirement that juvenile's parent be notified before obtaining a confession); People v. Pogue, 724 N.E.2d 525, 531-32 (Ill. App. Ct. 1999) (stating that a juvenile has "no per se right to have a parent present during" or to consult with a parent before questioning)).

to identify what facts his counsel should have investigated and what additional preparation his counsel should have undergone such that appellant would not have pleaded guilty and would have insisted on proceeding to trial.[12] Therefore, the district court did not err in denying this claim.

Fifth, appellant argued that his counsel was ineffective for failing to seek alternative treatment or sentencing options for appellant. Appellant failed to demonstrate that counsel's performance was deficient. The crime of robbery with a deadly weapon is a non-probationable offense and appellant was not eligible for boot camp due to the nature of the offense.[13] While counsel asked the district court to recommend that appellant be placed in a section of the prison reserved for juveniles, the district court indicated that was for the prison to determine. Because appellant could not establish that counsel's performance was deficient, the district court did not err in denying this claim.

Sixth, appellant claimed that his counsel was ineffective for coercing him into pleading guilty. Appellant failed to demonstrate that he was prejudiced. Appellant stated, in the plea agreement and during the

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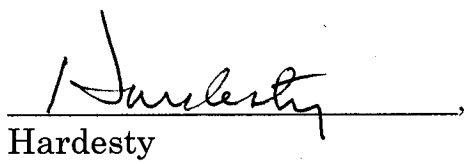
[12]See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims, which are unsupported by specific facts, are insufficient to grant relief).

[13]See 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165(4)); NRS 176A.780.

plea canvass, that he was not pleading guilty as a result of threats or coercion. Therefore, the district court did not err in denying this claim.[14]

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.[15] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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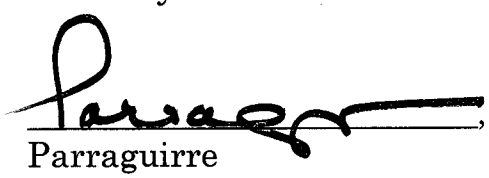

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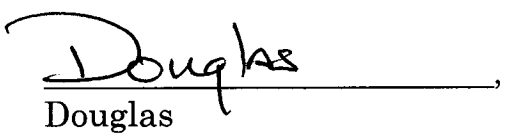

_____, J.
Douglas

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[14]To the extent that appellant argued that his plea was involuntary because his counsel was ineffective for coercing him to plead guilty, the district court did not err in denying this claim for the reason set forth above. See Freese v. State, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

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

cc: Hon. Valorie Vega, District Judge
Coreyean Johnson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk