IN THE SUPREME COURT OF THE STATE OF NEVADA

YOHANNES KEREDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50191

FILED

MAR 06 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; Jennifer Togliatti, Judge.

On June 13, 2006, the district court convicted appellant, pursuant to a guilty plea, of two counts of coercion. The district court sentenced appellant to serve a term in the Nevada State Prison of 28 to 72 months on count 1 and a concurrent term of 28 to 72 months on count 2. Appellant did not file a direct appeal.

On June 11, 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 August 28, 2007, the district court denied appellant's petition. 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]

First, appellant claimed that his trial counsel was ineffective for failing to pursue an actual innocence defense or a plea of guilty but mentally ill. Appellant failed to demonstrate that his trial counsel was deficient or that he was prejudiced. Appellant failed to demonstrate that he was actually innocent of the crimes for which he was convicted because he failed to present any facts supporting his claim of actual innocence. Appellant also failed to demonstrate that his trial counsel was deficient for failing to pursue a plea of guilty but mentally ill as such a plea was not available at the time appellant entered his plea.[3] Moreover, appellant failed to demonstrate that his trial counsel was deficient for failing to pursue a defense or plea premised upon appellant's mental illness as appellant failed provide any facts or demonstrate that he was in a delusional state at the time of the crime and that he did not know or

---

[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]Finger v. State, 117 Nev. 548, 575-76, 27 P.3d 66, 84 (2001); see also 2003 Nev. Stat., ch. 284, § 4(4), at 1457-58 (amending NRS 174.035 and abolishing the plea of "guilty but mentally ill").

understand the nature and capacity of his act or appreciate the wrongfulness of his act.[4]

Furthermore, appellant failed to demonstrate that his guilty plea was not knowingly or voluntarily entered. Instead, appellant signed a plea agreement which indicated that he understood that the plea bargain was in his best interest. Appellant also acknowledged that he had discussed any "possible defenses, defense strategies and circumstances which might be in my favor." Importantly, the record demonstrates that a grand jury indicted appellant on charges of burglary, battery with the intent to commit a sexual assault, and two counts of first degree kidnapping. Appellant pleaded guilty to two counts of coercion. In pleading guilty, appellant received a substantial benefit in that coercion carries a lesser sentence than either burglary, battery with the intent to commit a crime, or first degree kidnapping.[5] In light of the considerable evidence against appellant, trial counsel was not ineffective for failing to pursue this defense or plea. Therefore, the district court did not err in denying appellant's claim.

Second, appellant claimed that his trial counsel was ineffective for failing to investigate appellant's mental health history and mental state at the time of the proceedings. Appellant failed to

---

[4]See Finger, 117 Nev. 548, 576-77, 27 P.3d 66, 84-85 (setting forth the M'Naghten standard for legal insanity—a defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act).

[5]NRS 200.400; NRS 205.060; NRS 200.310; NRS 200.320 and NRS 207.190.

demonstrate that his trial counsel was deficient or that he was prejudiced. Appellant failed to sufficiently set forth facts demonstrating how further investigation of his mental state would have altered the outcome in this case. 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 he has a rational as well as factual understanding of the proceedings against him.'"[6] Appellant must demonstrate incompetence by a preponderance of the evidence.[7] Here, appellant failed to provide any evidence of his incompetence to stand trial; instead, appellant merely concluded that he was incompetent because he was admitted to Lakes Crossing prior to being determined competent to stand trial and that his institutional psychologist will attest to his current mental health state. Notably, appellant acknowledged that the doctors at Lakes Crossing determined he was competent.[8] Thus, appellant failed to demonstrate that there is a reasonable probability of a different outcome had his trial counsel further investigated his mental state. Therefore, the district court did not err in denying appellant's claim.

Third, appellant claimed that his trial counsel was ineffective for failing to investigate the defense of voluntary intoxication. Appellant failed to demonstrate that his counsel's performance was deficient or that

---

[6]Melchor-Gloria v. State, 99 Nev. 174, 179-180, 660 P.2d 109, 113 (1983) (quoting Dusky v. United States, 362 U.S. 402 (1960)).

[7]Cooper v. Oklahoma, 517 U.S. 348, 355-56 (1996).

[8]Depression and drug treatment are insufficient to prove incompetence.

appellant was prejudiced. Appellant failed to provide specific facts in support of this claim, which if true, would have entitled him to relief.[9] Appellant merely alleged that he had been drinking Hennessy and beer prior to when the crimes occurred. Importantly, this court has noted that the mere consumption of intoxicants is not sufficient to demonstrate intoxication.[10] Therefore, we conclude that the district court did not err in determining that trial counsel was not ineffective in this regard.

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.[11] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Douglas

---

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

[10]Nevius v. State, 101 Nev. 238, 249, 699 P.2d 1053, 1060 (1985).

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

cc: Hon. Jennifer Togliatti, District Judge
Yohannes Kerede
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk