

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS L. SHAULEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50721

FILED

JAN 08 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Nicholas L. Shauley's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Shauley was convicted, pursuant to an Alford plea, of one count each of pandering of a child and possession of visual presentation depicting sexual conduct of a person under 16 years of age. See North Carolina v. Alford, 400 U.S. 25 (1970). The district court sentenced Shauley to a prison term of 36 to 120 months for pandering and a concurrent term of 18 to 48 months for possession. Shauley did not file a direct appeal.

Shauley filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to assist Shauley, and counsel filed a supplemental petition. The State opposed the petition and supplemental petition. The district court denied the petition, after conducting an evidentiary hearing. This appeal followed.

In his petition, Shauley claimed that his counsel was ineffective for failing to file a pretrial petition for a writ of habeas corpus challenging the sufficiency of the evidence for all charges on which he was bound over to the district court. Shauley further alleged that counsel's ineffectiveness rendered his plea invalid. On appeal, Shauley claims that the district court erred by finding that his counsel was not ineffective and his guilty plea was not invalid. We conclude this claim lacks merit.

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. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland v. Washington, 466 U.S. 668, 697 (1984). The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

The district court found that sufficient evidence was presented at the preliminary hearing to bind Shauley over on the charges for first-degree kidnapping, use of a minor in producing pornography, and possession of visual presentation depicting sexual conduct of a person under 16 years of age. See Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (holding that probable cause to support a criminal charge

“may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused.” (citations omitted)). The district court further found that counsel was not ineffective for failing to raise a claim that the counts relating to the photographs of the victim were redundant. The district court reasoned that at the time of the preliminary hearing, this court had not yet decided Wilson v. State, 121 Nev. 345, 357-58, 114 P.3d 285, 293-94 (2005) (reversing three convictions for the use of a child as the subject in the performance of a sexual portrayal or act on the basis that the four pictures of the minor’s performance constituted a single violation of NRS 200.710), and counsel was not ineffective for failing to anticipate the ruling in Wilson. Finally, the district court found that Shauley failed to demonstrate that under the totality of the circumstances his guilty plea was not entered knowingly and voluntarily. See Bryant v. State, 102 Nev. 268, 271-72, 721 P.2d 364, 367-68 (1986); State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

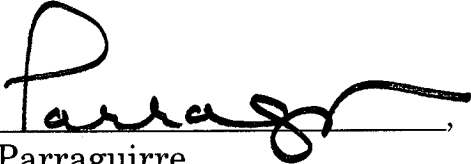
Shauley has not demonstrated that the district court’s findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Shauley has not demonstrated that the district court erred as a matter of law. Therefore, we conclude the district court did not err by finding that counsel was effective and the guilty plea was valid, and we affirm the denial of these claims.

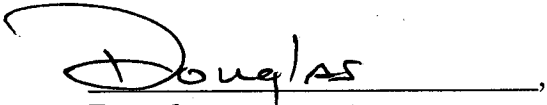
Shauley also claims that the State’s failure to provide discovery before the preliminary hearing violated his due process rights. Shauley waived any challenge to the denial of his due process rights by pleading guilty. “[A] guilty plea represents a break in the chain of events

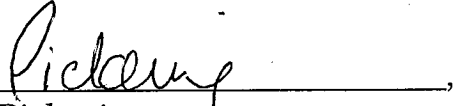
which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). Accordingly, we affirm the denial of this claim.

Having considered Shauley’s contentions on appeal and determined that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


Parraguirre J.


Douglas J.


Pickering J.

cc: Hon. David B. Barker, District Judge
Karen A. Connolly, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk