

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYATT DALE ERICKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50963

FILED

DEC 23 2008

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 dismissing appellant Ryatt Dale Erickson's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Robert E. Estes, Judge.

On October 15, 2004, Erickson was convicted, pursuant to a nolo contendere plea, of battery with intent to kill (count I) and possession or control of a dangerous weapon by a prisoner (count II). The district court sentenced Erickson to serve a prison term of 48 to 200 months for count I and a consecutive prison term of 12 to 36 months for count II. We affirmed Erickson's judgment of conviction on direct appeal.¹

¹Erickson v. State, Docket No. 44285 (Order of Affirmance, June 16, 2005). On direct appeal, this court reviewed the district court's decision to deny Erickson's proper person presentence motion to withdraw the guilty plea, and concluded that Erickson's guilty plea was knowing, voluntary, and intelligent.

On September 16, 2005, Erickson filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Erickson, and counsel filed a supplemental petition. The State opposed the petition. After conducting an evidentiary hearing, the district court entered an order dismissing the petition. This timely appeal followed.

Erickson contends that the district court erred in dismissing his ineffective assistance of counsel claims. Erickson asserts that his trial counsel was ineffective for failing to investigate the side effects of prescription medication that Erickson had been taking around the time he committed the offenses. Erickson also asserts that his trial counsel was ineffective for failing to assert an insanity or diminished capacity defense based on the medication's side effects. We conclude that Erickson's contention is without merit.

A claim of ineffective assistance of counsel presents a mixed question of law and fact that is subject to independent review.² 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 fell below an objective standard of reasonableness.³ Further, a petitioner must demonstrate resulting prejudice such "that there is a reasonable probability that, but

²Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

³Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey, 112 Nev. at 987, 923 P.2d at 1107.

for counsel's errors, [petitioner] would not have pleaded guilty and would have insisted on going to trial."⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵ "[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence."⁶ A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it "is supported by substantial evidence and is not clearly wrong."⁷

The district court found that Erickson's trial counsel provided deficient legal representation when he failed to investigate the potentially serious side effects of Erickson's medication. Nevertheless, the court found that counsel's deficiency was not prejudicial, as there was no evidence that the result of the proceeding would have been different had counsel investigated the medication's side effects. The district court further found that trial counsel's failure to investigate or pursue an insanity or diminished capacity defense was not deficient or prejudicial.

The record reveals that Erickson was incarcerated in the Lyon County jail on March 30, 2007, in connection with a probation violation. Shortly thereafter, Erickson was prescribed the drug Paxil to treat

⁴Hill, 474 U.S. at 59; Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

⁵Strickland v. Washington, 466 U.S. 668, 697 (1984).

⁶Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

⁷Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

depression and the drug Trazadone to treat insomnia. The underlying charges arose from an incident on May 1, 2007, where Erickson used an eight inch bolt to attack a sheriff's deputy in an attempt to escape. Erickson threatened to kill the deputy and continued the attack until another deputy subdued him with pepper spray.

Erickson's trial counsel testified at the evidentiary hearing that he did not investigate the effects of any medication Erickson may have been taking. However, Erickson's counsel did obtain a mental competency evaluation of Erickson before he entered his plea. The evaluation found that Erickson suffered from depression, but had sufficient mental competence to understand the charges against him and to assist defense counsel. The evaluation also noted that Erickson was highly manipulative.

The district court found that while Erickson reported experiencing auditory hallucinations around the time of the attack, there was no evidence presented at the evidentiary hearing that either the medication or the medication's side effects caused Erickson's conduct. The district court further found that there was no evidence showing that Erickson was in a delusional state at the time he committed the offenses, such that he was unable to know or understand the nature and capacity of his actions or understand that his conduct was unlawful.⁸ Specifically, the

⁸See Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84-85 (2001) (providing that to establish a valid insanity defense a defendant must show that he was "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").

nurse practitioner, who was treating Erickson in jail, testified at the evidentiary hearing that Erickson did not have paranoid delusions, and that in her experience, neither medication has caused a person to become delusional such that they could not understand the nature of their actions. Further, Dr. Vuppalapati, a psychiatrist who reviewed Erickson's medical records, testified that case reports of Paxil causing a delusional state or a mental status change are very rare, and that Trazadone does not cause confusion or have major side effects. The record also reveals that Erickson voluntarily stopped taking the Paxil four days before the offense occurred, and, according to Dr. Vuppalapati's testimony, any effects of the Paxil would have been gone within 20 to 72 hours of the last dose.

Moreover, the district court found that Erickson's actions of stealing the bolt several days before the crime and sharpening it into a shank demonstrated that Erickson understood the wrongful nature of his actions. Thus, Erickson failed to demonstrate that an insanity defense would have been successful.⁹

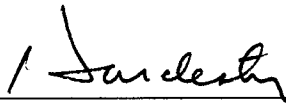
Having reviewed the record, we conclude that the district court's determinations are supported by substantial evidence and are not clearly wrong. Erickson failed to show that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated

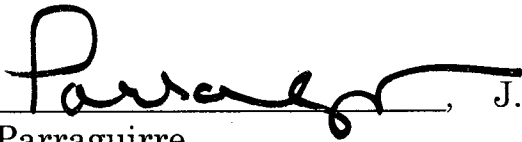
⁹As for Erickson's claim that his counsel failed to assert a diminished capacity defense, we note that there is no such defense in Nevada. See Crawford v. State, 121 Nev. 744, 757, 121 P.3d 582, 591 (2005).

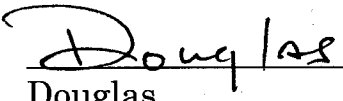
the medication's side effects or pursued an insanity defense. As such, Erickson did not demonstrate any prejudice by his counsel's performance.

We therefore conclude that the district court did not err in dismissing Erickson's claims of ineffective assistance of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Robert E. Estes, District Judge
Pederson & Kalter, P.C.
Attorney General Catherine Cortez Masto/Carson City
Lyon County District Attorney
Lyon County Clerk