

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS ALVAREZ-YANEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51149

FILED

DEC 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On October 5, 2007, the district court convicted appellant, pursuant to an Alford plea,¹ of one count of attempted sexual assault on a minor under the age of sixteen years. The district court sentenced appellant to serve a term of 24 to 120 months in the Nevada State Prison. No direct appeal was taken.

On October 18, 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 January 15, 2008, the district court denied appellant's petition. This appeal followed.

¹North Carolina v. Alford, 400 U.S. 25 (1970).

In his petition, appellant claimed that he received ineffective assistance of counsel. 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.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

First, appellant claimed that his trial counsel coerced him into entering a guilty plea. Appellant claimed that his trial counsel abused him and discriminated against appellant based on his ethnicity and indigency. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. During the plea canvass and in signing the written guilty plea agreement, appellant acknowledged that his guilty plea was freely and voluntarily entered and was not the product of coercion or duress. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to challenge an alleged Miranda violation.⁴ Appellant further claimed that his trial counsel failed to challenge his

²Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

³Strickland v. Washington, 466 U.S. 668, 697 (1984).

⁴Miranda v. Arizona, 384 U.S. 436 (1966).

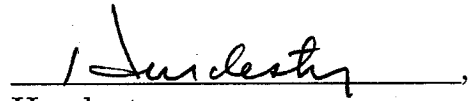
confession as a product of physical assault from the police. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Contrary to appellant's assertion, appellant's trial counsel filed a motion to suppress his confession on the basis of an alleged Miranda violation, but appellant entered his guilty plea prior to the district court's resolution of the motion. Appellant failed to demonstrate that trial counsel was ineffective for failing to pursue the motion under these circumstances. Appellant further failed to demonstrate that his trial counsel was ineffective for failing to challenge the confession as involuntarily entered. A transcript of his interview with the police is included in the record on appeal, and nothing in the transcript supported his assertion of a physical assault by the police. In light of the other evidence against appellant, including the victim's potential testimony and the victim's mother's potential testimony, appellant failed to demonstrate a reasonable probability that but for trial counsel's failure to challenge the confession he would have insisted upon going to trial. Notably, appellant received a substantial benefit by entry of his guilty plea in the instant case. In exchange for his plea of guilty to one count of attempted sexual assault on minor under the age of sixteen years, the State did not pursue seven counts of sexual assault on a minor under the age of sixteen years. Therefore, we conclude that the district court did not err in denying this claim.

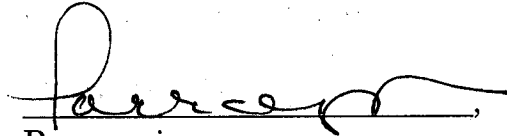
Next, appellant claimed that the district court failed to conduct a hearing on his motion to dismiss counsel and erred in denying his presentence motion to withdraw a guilty plea without a hearing. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of

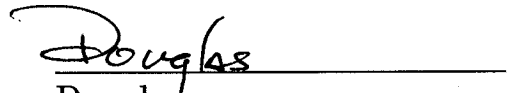
conviction based upon a guilty plea and should have been raised on direct appeal.⁵

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Jesus Alvarez-Yanez
Attorney General Catherine Cortez Masto/Las Vegas
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See NRS 34.810(1)(a); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).