

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHAN GRIGORIAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51443

FILED

MAY 01 2009

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Stephan Grigorian's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On June 23, 2006, the district court convicted Grigorian, pursuant to a guilty plea, of one count of burglary, two counts of fraudulent use of a credit card, and two counts of obtaining and/or using the personal identification information of another. The district court sentenced Grigorian to various consecutive and concurrent terms of imprisonment totaling 76 to 252 months. We affirmed the judgment of conviction on direct appeal. Grigorian v. State, Docket Nos. 47573 & 47574 (Order of Affirmance, December 11, 2006).

On June 14, 2007, Grigorian filed a post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss, Grigorian opposed the motion, the district court heard argument on the motion, and the district court dismissed Grigorian's petition. This appeal followed.

Grigorian contends that the district court abused its discretion by failing to conduct an evidentiary hearing on his claims of ineffective assistance of counsel.

“A post-conviction habeas petitioner is entitled to an evidentiary hearing ‘only if he supports his claims with specific factual allegations that if true would entitle him to relief.’” Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (quoting Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)). To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel’s performance was deficient, and that the petitioner was prejudiced by counsel’s performance. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)). To show prejudice, a petitioner who has entered a guilty plea must demonstrate “a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985) (emphasis omitted)). Prejudice is presumed if the petitioner “demonstrates that counsel ‘actively represented conflicting interests’ and that ‘an actual conflict of interest adversely affected his lawyer’s performance.’” Strickland, 466 U.S. at 692 (quoting Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)). The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong. See id. at 697.

Here, Grigorian claims that the district court should have conducted an evidentiary hearing on his allegations that counsel failed to (1) communicate with him; (2) investigate potential witnesses and defenses; (3) determine whether he was able to provide substantial

assistance to law enforcement authorities; (4) conduct plea negotiations; (5) obtain the services of an investigator to investigate the facts of the case and assist in preparing defenses; (6) file a pretrial motion to suppress his statement to the FBI and video tape evidence; (7) file other pretrial motions, including a discovery motion; (8) list, interview, and subpoena witnesses; (9) hire an expert witness to challenge the handwriting evidence; (10) hire an interpreter to translate the plea agreement; (11) supervise co-counsel; and (12) provide effective assistance on direct appeal. Grigorian further claims that the district court should have conducted an evidentiary hearing on his claims that he received ineffective assistance of counsel due to a conflict of interest with his counsel and an inherent conflict with the Jack Alian Contract Group.


The district court determined that (1) most of Grigorian's claims were conclusory because they were not supported with any facts that explained how counsel's performance was deficient, (2) none of Grigorian's claims showed that he was prejudiced by counsel's performance, and (3) he did not establish that counsel represented conflicting interests or that he was adversely affected by an actual conflict of interest. Further, the district court noted that on direct appeal this court concluded that Grigorian did not suffer any prejudice from not having a translator and that our conclusion was now the law of the case. See Grigorian, Docket Nos. 47573 & 47574 (Order of Affirmance, December 11, 2006) at 2. The record on appeal supports the district court's analysis of these claims and therefore we conclude that the district court did not abuse its discretion by dismissing them without the benefit of an evidentiary hearing. See NRS 34.770(2).


Grigorian also contends that he was (1) denied effective assistance of counsel when the district court deprived him of his right to have the counsel of his choice, did not inquire into the problems that he experienced with counsel, and refused to substitute counsel; (2) denied his right to a speedy trial; and (3) illegally sentenced in violation of the Double Jeopardy Clause. Grigorian further contends that NRAP 3C unconstitutionally deprives defendants of their right to counsel of their choice. Because Grigorian did not raise these contentions in the habeas petition filed below, and he has not alleged cause and prejudice for his failure to do so, we decline to consider them here. See McNelson v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Having considered Grigorian's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk