

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMMIE JACKSON A/K/A JAMIE
RAMONE JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52015

FILED

MAR 13 2009

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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On February 27, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 180 months in the Nevada State Prison. This court dismissed appellant's untimely appeal for lack of jurisdiction. Jackson v. State, Docket No. 43095 (Order Dismissing Appeal, June 2, 2004).

On October 15, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On January 4, 2005, the district court denied the petition. On appeal, this court reversed the order of the district court denying the petition and remanded the matter to the district court to allow appellant an opportunity to withdraw his guilty plea. Jackson v. State, Docket No. 44744 (Order of Reversal and Remand, April 20, 2006).

On remand, appellant withdrew the guilty plea and entered into new plea negotiations. On January 29, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 24 to 60 months in the Nevada State Prison. This court affirmed the judgment of conviction on direct appeal. Jackson v. State, Docket No. 49032 (Order of Affirmance, September 11, 2007).

On January 8, 2008, 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, the district court declined to appoint counsel to represent appellant. On August 1, 2008, after conducting an evidentiary hearing, the district court denied appellant's petition. This appeal followed.

First, appellant claimed that he was falsely imprisoned and that various constitutional rights were violated. Specifically, appellant claimed that the district court failed to vacate the original 2004 judgment of conviction after this court's decision in his original post-conviction appeal. This caused him to continue to serve the 2004 original judgment of conviction, and when he was convicted in 2007, to serve two judgments of conviction for the same offense. Appellant sought specific performance of the plea agreement. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). To the extent that he challenged the validity of the guilty plea, appellant failed to demonstrate that his guilty plea was unknowing or involuntarily entered. Appellant received the sentence he bargained for, and any errors relating to the 2004 judgment of conviction were eventually corrected. See State v. Freese, 116 Nev. 1097, 13 P.3d

442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986). Therefore, we conclude that the district court did not err in denying this claim.

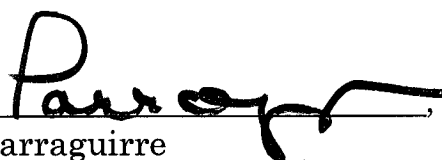
Next, in his petition, appellant contended that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that there was a reasonable probability of a different outcome on appeal. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697. A petitioner must prove the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence, and the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


Appellant claimed that his trial counsel was ineffective for failing to inform the Department of Corrections that the original 2004 judgment of conviction had been vacated, or alternatively, inform the district court of the error. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Trial counsel testified at the evidentiary hearing that he telephoned the prison regarding the error and was informed the error would be fixed. The prison's records at the time of the evidentiary hearing indicated that the error had been fixed. Appellant failed to demonstrate that he would not have entered a guilty plea absent the alleged error. Therefore, we conclude that the district court did not err in denying this claim.

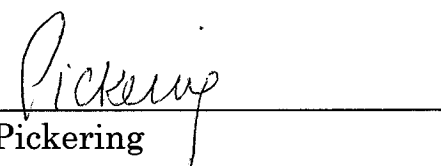
Appellant further claimed that trial counsel failed to file an appeal from the 2007 judgment of conviction, which forced appellant to file his own notice of appeal. Appellant pursued a direct appeal with the assistance of counsel in this court, and thus, appellant failed to demonstrate that he was prejudiced by trial counsel's performance in this regard. Therefore, we conclude that the district court did not err in denying this claim.¹

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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

¹To the extent that appellant claimed that trial counsel was ineffective in failing to file an appeal from the 2004 judgment of conviction, no relief is warranted in light of the procedural history set forth earlier.

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Jammie Jackson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk