IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM R. ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52147

FILED

MAY 18 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; David B. Barker, Judge.

On March 22, 2007, the district court convicted appellant, pursuant to a guilty plea, of robbery with the use of a deadly weapon. The district court sentenced appellant to serve 2 consecutive terms of 48 to 120 months in the Nevada State Prison. No direct appeal was taken.

On February 28, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court in Case Number 228485.[1] The State opposed the petition. Pursuant to NRS

[1]On the face of the petition, appellant designated two different case numbers, C228485 and C223587. This petition was considered in the district court for each case separately and this appeal is from the denial of the petition for case number C228485. It appears that the claims in the petition were actually meant for case number C223587. As the district

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34.750, the district court declined to appoint counsel to represent appellant. After conducting a limited evidentiary hearing on appellant's appeal deprivation claim, the district court denied the petition on August 6, 2008. This appeal followed.

In his petition, appellant claimed that his plea was involuntary. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

Appellant claimed that his guilty plea was involuntary because the State obtained his statement without reading him his rights

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court considered claims in the petition for case number C228485, we do so also.

We further note that, in case number C223587, the district court denied the petition and this court affirmed the order of the district court. Adams v. State, Docket No. 52474 (Order of Affirmance, April 21, 2009).

pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Appellant claimed that the improperly obtained statement gave him no choice but to plead guilty. Appellant failed to demonstrate that his guilty plea was involuntary. Appellant failed to identify any statement he made to police and the record indicates that appellant declined to speak with the arresting officers. As such, appellant put forth only bare or naked claims. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Further, appellant agreed to relieve the State of its burden of proving his guilt beyond a reasonable doubt by entering his guilty plea. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his trial counsel were ineffective. The right to the effective assistance of counsel applies "when deciding whether to accept or reject a plea bargain." Larson v. State, 104 Nev. 691, 693 n.6, 766 P.2d 261, 262 n.6 (1988) (citing McMann v. Richardson, 397 U.S. 759 (1970)). 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 counsel's performance fell below an objective standard of reasonableness, see Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the test set forth in Strickland), and that, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court can dispose of a claim if the petitioner makes an insufficient showing on either prong. Strickland, 466 U.S. at 697. A petitioner must

demonstrate the facts underlying a claim of ineffective assistance of counsel 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).

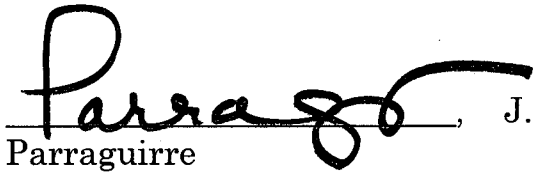
Appellant claimed that his trial counsel were ineffective for failing to suppress his statement to police because he was not read his Miranda rights. Appellant failed to demonstrate that his trial counsel were deficient or that he was prejudiced. As discussed above, appellant failed to identify any statement he gave to the police and as such, put forth only a bare and naked claim. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel were ineffective for failing to file a direct appeal. Appellant failed to demonstrate that his trial counsel were deficient or that he was prejudiced. "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction." Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); see Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal." Davis, 115 Nev. at 20, 974 P.2d at 660. At the evidentiary hearing, both of appellant's trial counsel stated that appellant did not ask them to file an appeal. Both also said they were not aware of any non-frivolous issue that could have been raised. Substantial

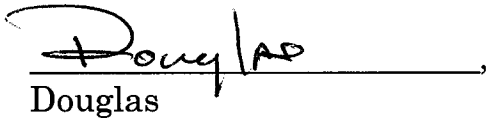
evidence supports the district court's finding that appellant did not request a direct appeal. Therefore, the district court did not err in denying this claim.

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 Luckett 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

cc: Hon. David B. Barker, District Judge
William R. Adams
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk