

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES E. MACDONALD D/B/A ANGEL  
INVESTMENT GROUP, LLC,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52603

**FILED**

**MAR 30 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; Kenneth C. Cory, Judge.

On February 28, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of securities fraud against a person 60 years of age or older. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for a period not to exceed 5 years. No direct appeal was taken.

On April 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 6, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he received ineffective assistance of trial counsel.<sup>1</sup> 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. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland v. Washington, 466 U.S. 668, 697 (1984).

Appellant appeared to claim that his trial counsel was ineffective for not raising a speedy trial objection. Appellant claimed that he informed his trial counsel that he wished to raise a violation of his speedy trial rights, but that his trial counsel advised him to take the plea deal, which included an offer of probation. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. In pleading guilty, appellant expressly waived the right to a speedy and public trial. Appellant failed to demonstrate a speedy trial

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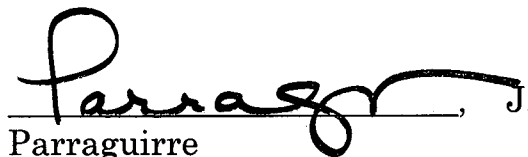
<sup>1</sup>To the extent that appellant raised the underlying claim independently from his claim of ineffective assistance of counsel, the claim was waived as he failed to raise it on direct appeal, and appellant failed to demonstrate good cause for his failure to do so. See NRS 34.810(1)(b).

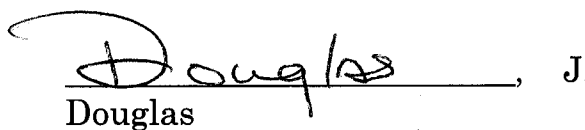
violation under the Interstate Agreement on Detainers. Appellant was returned to Nevada and agreed to plea negotiations prior to the expiration of the 180-day trial period required under IAD. NRS 178.620 (article III: providing that when a prisoner initiates a demand for a speedy trial upon a detainer, the prisoner shall be brought to trial within 180 days). Appellant further failed to demonstrate a speedy trial violation under the Sixth Amendment; notably, an affidavit in the record on appeal indicates that after the filing of the criminal complaint appellant's whereabouts were unknown to the State, appellant was brought back to Nevada shortly after his written demand for a speedy trial, and appellant did not demonstrate prejudice as the result of any delay. See Windham v. State, 118 Nev. 226, 232, 43 P.3d 993, 997-98 (2002) (applying a four-part balancing test to determine whether a Sixth Amendment violation has occurred: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) the prejudice to the defendant as a result of the delay). Finally, in exchange for his guilty plea, appellant avoided additional charges of sale of unregistered securities to a person over the age of 60 years, transacting business as an unlicensed broker-dealer and/or sales representative to a person 60 years or older, and felony-level theft. Therefore, we affirm the order of the district court denying the petition.

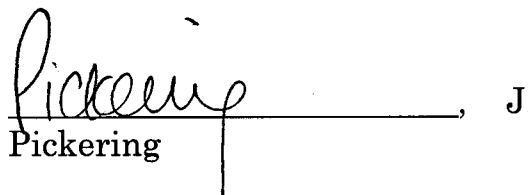
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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.<sup>2</sup>

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. Kenneth C. Cory, District Judge  
James E. MacDonald  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.