


IN THE SUPREME COURT OF THE STATE OF NEVADA

VORNELIUS JAMAL PHILLIPS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52692

**FILED**

**MAR 10 2010**

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT

THE JUDGMENT OF CONVICTION

This is an appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellant first argues that the district court erred in denying his claim that his guilty plea was involuntary. Specifically, he argues that he did not understand that by pleading guilty, he could be sentenced to life in prison without the possibility of parole without having a jury find any facts. Appellant fails to carry his burden of proof that his plea was invalid. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Appellant signed a "consequences of plea and waiver of rights" document that stated that he was waiving his right to a jury trial and could be sentenced to consecutive terms of life in prison without the possibility of parole. His plea colloquy further informed him of the consequences of his waiver, and he affirmatively acknowledged that he understood the document he signed and the information in the colloquy. Because the totality of the circumstances reveals that appellant understood the consequences of his plea, see State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000), we conclude that the district court did not abuse its

discretion in denying appellant's claim, see Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Appellant next argues that his trial counsel were ineffective in advising him to enter unnegotiated guilty pleas to all counts. He argues that counsel were deficient because their only reason for advising him to plead guilty was that they feared the State would successfully challenge the district court's finding that appellant was not death-eligible due to mental retardation. 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 (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) 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. Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); see also Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

Appellant failed to demonstrate that trial counsel's conduct was deficient. Even if trial counsel's fears regarding appellant's death-ineligible status were objectively unreasonable, counsel testified at the evidentiary hearing to three other reasonable, strategic reasons for advising appellant to plead guilty. Such "[t]actical decisions are virtually unchallengeable absent extraordinary circumstances." Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogated in part on other grounds by Harte v. State, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000). Appellant, who had the burden at the evidentiary hearing of demonstrating by a preponderance of the evidence the facts underlying his claim, see Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004),

presented no extraordinary circumstances. Because appellant has failed to satisfy the deficiency prong, we need not consider the prejudice prong,<sup>1</sup> see Strickland, 466 U.S. at 697, and therefore conclude that the district court did not err in denying this claim.

We note that for count II, appellant pleaded guilty to, and the judgment of conviction reflects that appellant was convicted of, robbery with a deadly weapon. However, appellant's sentence does not reflect the deadly weapon enhancement mandated by NRS 193.165. Therefore, we remand this matter to the district court for correction of the judgment of conviction to reflect the imposition of the mandatory deadly weapon enhancement. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND for the limited purpose of correcting the judgment of conviction.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

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<sup>1</sup>We note, however, that appellant also fails to satisfy the prejudice prong. He does not claim that but for pleading guilty, there is a reasonable probability that he would have received a different sentence. Rather, he argues merely that his sentence would have been the result of findings of fact made by a jury. First, appellant knowingly, voluntarily and intelligently waived his right to a jury trial, so he was not entitled to factfinding by a jury. Second, the Strickland standard generally looks to whether the outcome—not merely the means—could have been different.

cc: Eighth Judicial District Court Dept. 8, District Judge  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk