

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERREL JOSEPH LOYD,

Appellant,

vs.

WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DAVID  
MILLIGAN,

Respondent.

2000-05-08 12:22

**FILED**

MAY 08 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Shearing*  
CHIEF DEPUTY CLERK

No. 34823

TERREL JOSEPH LOYD,

Appellant,

vs.

WARDEN, NORTHERN NEVADA  
CORRECTIONAL CENTER, DAVID  
MILLIGAN,

Respondent.

ORDER DISMISSING APPEALS

These are consolidated appeals from an order of the district court denying appellant's post-conviction petitions for writs of habeas corpus.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we conclude that the district court properly denied appellant's petitions. Accordingly, we

ORDER these appeals dismissed.

*Maupin* J.  
Maupin  
*Shearing* J.  
Shearing  
*Becker* J.  
Becker

cc: Hon. Jerome M. Polaha, District Judge  
Attorney General  
Washoe County District Attorney  
Karla K. Butko  
Washoe County Clerk

00-07447

ORIGINAL

FILED

AUG -9 1999

AMY HARVEY, CLERK  
By: *[Signature]* DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

TERREL JOSEPH LOYD,

Petitioner,

v.

JACKIE CRAWFORD, WARDEN,  
LOVELOCK CORRECTIONAL CENTER,

Respondent.

Case No. CR97P0171  
Case No. CR96P2817  
Dept. No. 3

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

On July 29, 1999, the parties, by and through their respective counsel, Joseph R. Plater, for the State of Nevada, and Karla Butko, for the petitioner, appeared before the court on petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). After having heard and considered the evidence, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In May 1996, petitioner was arrested for first degree arson; in June 1996, petitioner retained Paul Quade, Esq. to represent

1 him. Mr. Quade was competent to represent petitioner.

2 2. There was little, if any, direct proof that petitioner was  
3 guilty of arson; petitioner maintained his innocence at all  
4 stages of the proceedings against him, including this habeas  
5 action.

6 3. After he was arrested, petitioner was released on his own  
7 recognizance; he met extensively (several times a week) with Mr.  
8 Quade at Mr. Quade's office. Mr. Quade explained the elements  
9 and penalties of arson to petitioner; petitioner understood the  
10 elements and penalties of the charge.

11 4. As Mr. Quade and petitioner met and discussed the case,  
12 petitioner advanced an alibi defense. According to petitioner,  
13 he was at an AM/PM mini-market at 2:30 a.m. the day that the  
14 residence of his former wife's burned down. Petitioner claimed  
15 that after he left the AM/PM store, he went to the Oxbow Hotel,  
16 stayed there for approximately fifteen minutes, and then went to  
17 Motel 6 where he spent the night.

18 5. Mr. Quade investigated the alibi defense and concluded that  
19 it lacked merit. Specifically, it was determined that the fire  
20 began at about 2:00 a.m. Further, when Mr. Quade reviewed the  
21 AM/PM videotape, he did not see petitioner. Also, petitioner did  
22 not identify any person who could verify his alibi, nor did  
23 petitioner present any additional evidence at his habeas hearing  
24 to support his alibi claim. Accordingly, the court rejects  
25 petitioner's claim that Mr. Quade was ineffective for failing to  
26 investigate alibi witnesses.

1 6. Given the evidentiary problems of the arson charge, the  
2 prosecutor offered petitioner a plea agreement to plead guilty to  
3 a gross misdemeanor charge; Mr. Quade was prepared to advise  
4 petitioner to accept the offer. However, on the evening of the  
5 day that the offer was extended, petitioner went to the residence  
6 of his former wife, broke in, and attacked her with a baseball  
7 bat, hitting her five to seven times, including her head,  
8 breaking her arm in several places, and telling her that he  
9 "might as well kill her since she had killed him."

10 7. Accordingly, petitioner was charged with attempted murder,  
11 burglary, and battery with a deadly weapon, and the prosecutor  
12 rescinded the plea offer. Mr. Quade explained the new charges,  
13 including the elements and possible penalties to petitioner;  
14 petitioner understood the elements and penalties of the new  
15 charges.

16 8. Petitioner understood all the charges against him and was  
17 able to assist Mr. Quade in his defense to the charges;  
18 accordingly, the court rejects petitioner's first claim that he  
19 did not voluntarily enter his plea because he was mentally  
20 incompetent.

21 9. Because the new charges increased the strength of the  
22 original arson charge, petitioner and the State agreed to a plea  
23 bargain: petitioner agreed that to plead guilty to battery with  
24 a deadly weapon and no contest to third degree arson, the parties  
25 would be free to argue for an appropriate sentence, and the State  
26 would dismiss the remaining charges.

1 10. Petitioner pled guilty and no contest pursuant to the plea  
2 agreement. Prior to petitioner's pleas, Mr. Quade carefully went  
3 over the details of the plea agreement with petitioner as  
4 contained in the written plea agreement; petitioner understood  
5 the written plea memorandum. Petitioner freely and voluntarily  
6 entered his pleas; his testimony that Mr. Quade coerced him into  
7 his pleas is expressly rejected as false.

8 11. Prior to sentencing, Mr. Quade filed a sentencing memorandum  
9 that outlined mitigating circumstances of petitioner's crimes and  
10 included supporting letters from friends. Petitioner's  
11 statement at sentencing and the presentence report also outlined  
12 mitigating factors relating to the crimes.

13 12. The court finds that Mr. Quade rendered effective assistance  
14 of counsel to petitioner at sentencing. Nothing that petitioner  
15 presented at the evidentiary portion of his habeas action would  
16 have changed the sentencing court's decision regarding  
17 petitioner's sentence.

18 13. On the day of sentencing, Mr. Quade gave petitioner a  
19 memorandum detailing petitioner's appellate rights; petitioner's  
20 testimony to the contrary is rejected as false. Mr. Quade also  
21 informed petitioner of his appellate rights in December 1996.  
22 Petitioner never advised Mr. Quade that he was dissatisfied with  
23 his sentence or convictions. Accordingly, Mr. Quade did not  
24 deprive petitioner of his right to direct appeal.

25 CONCLUSIONS OF LAW

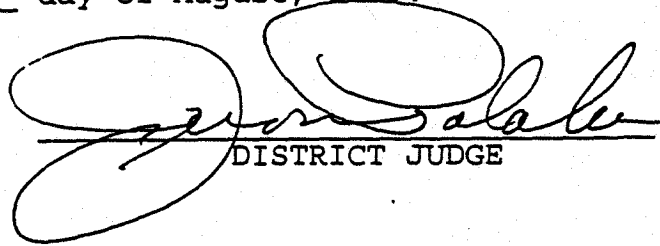
26 1. Petitioner was legally competent from the time he was

- 1 arrested until his sentencing.  
2 2. Petitioner voluntarily and knowingly entered his guilty plea.  
3 3. Mr. Quade rendered effective assistance of counsel.

4 JUDGMENT

5 It is therefore the judgment of this court that  
6 petitioner's Petition for Writ of Habeas Corpus (Post-Conviction)  
7 is hereby denied.

8 DATED this 5<sup>TH</sup> day of August, 1999.

9  
10   
11 \_\_\_\_\_  
12 DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26