

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN LOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53469

FILED

JUN 10 2010

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 appellant's post-conviction petition for writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

In his petition, filed on January 6, 2009, appellant raised several claims of ineffective assistance of counsel. To prove 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 in that there is a reasonable probability that, but for counsel's errors, petitioner would not

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

To the extent that appellant appealed the denial of his motion for counsel, we conclude the district court did not abuse its discretion in denying the motion. See NRS 34.750(1).

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). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that counsel was ineffective in forcing appellant to enter a guilty plea and in failing to explain to him the consequences of his plea. Appellant failed to demonstrate deficiency or prejudice. Appellant acknowledged in his guilty plea agreement and during his plea colloquy that he was entering his plea voluntarily and without duress and that he understood the elements of the charges and the sentencing ranges he would face. Accordingly, appellant's claims were belied by the record. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).² Moreover, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty but would have insisted on going to trial. We therefore conclude the district court did not err in denying these claims.

Second, appellant claimed that counsel was ineffective in not filing a motion to withdraw guilty plea on appellant's behalf. Appellant failed to demonstrate deficiency. Appellant did not claim that he had asked counsel to file such a motion. We therefore conclude the district court did not err in denying this claim.

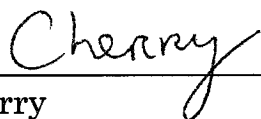
²For the same reasons, appellant's claim that his guilty plea was involuntary or unknowing was also belied by the record. See Hargrove, 100 Nev. at 503, 686 P.2d at 225 (1984). Further, by pleading guilty, appellant had waived his right to jury trial so that his claim of an unconstitutional denial of his right to a jury trial was also belied by the record. We therefore conclude the district court did not err in denying these claims.

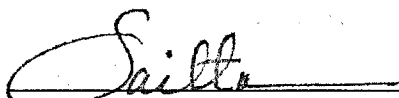
Third, appellant claimed that counsel was ineffective in telling the district court at appellant's change-of-plea hearing that appellant acted with deliberate cruelty. Appellant failed to demonstrate deficiency. Appellant's claim is belied by the record. See id. A review of the transcripts from both change-of-plea hearings and from appellant's sentencing hearing reveal that counsel made no such argument. We therefore conclude the district court did not err in denying this claim.


Appellant also claimed that his rights to equal protection and to be free from cruel and unusual punishment were violated and that he was entitled to a sentence modification and to hearing transcripts at the State's expense. As these claims do not challenge the validity of his guilty plea or allege ineffective assistance of counsel, we conclude the district court did not err in denying them. See NRS 34.810(1)(a).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

³We 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.

cc: Hon. Donald M. Mosley, District Judge
Justin Loper
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk