IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PETER CAVARRETTA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53515

FILED

OCT 27 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; Jackie Glass, Judge.

On February 2, 2006, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary and one count of robbery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on appeal. Cavarretta v. State, Docket No. 46861 (Order of Affirmance, October 22, 2007).

On December 26, 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 April 17, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised two claims of ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must

demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that there was a reasonable probability of a different outcome in the proceedings. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to challenge the validity of the prior convictions. Appellant failed to demonstrate that he was prejudiced. Appellant argued on direct appeal that the State had failed to sufficiently present proof of the prior convictions—in particular a California conviction and a Florida conviction. This court rejected the claim, noting that no objection had been made below, and analyzing the claim under plain error review, determining that the California conviction was sufficiently proven, and that even if the Florida conviction was not proven, habitual criminal adjudication was not in error because the State had presented proof of three prior felony convictions (one from California and two from Nevada). Because this court already determined three valid prior felony convictions were presented, appellant cannot demonstrate that he was prejudiced by trial counsel's failure to object. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to provide him with sound legal advice regarding the State's plea offer for small habitual criminal adjudication with a four to ten year sentence. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. To establish a claim

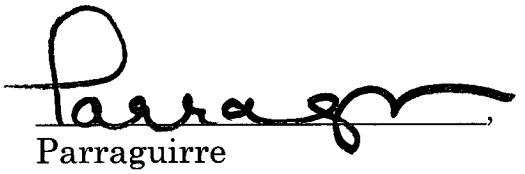
of ineffective assistance of counsel for advice regarding a plea offer, a petitioner must demonstrate that the advice was not within the range of competence required by counsel in a criminal case and that "but for counsel's errors, he would have pleaded guilty and would not have insisted on going to trial." Turner v. Calderon, 281 F.3d 851, 879 (9th Cir. 2002). In order to demonstrate that trial counsel's performance was not within the required range of competence, the petitioner must demonstrate "'gross error on the part of counsel' . . . that 'the advice . . . he received was so incorrect and so insufficient that it undermined [the petitioner's] ability to make an intelligent decision about whether to accept the [plea] offer.'" Id. at 880 (quoting McMann v. Richardson, 397 U.S. 759, 772 (1970) and U.S. v. Day, 969 F.2d 39, 43 (3d Cir. 1992)). In the instant case, appellant did not allege that trial counsel failed to inform him of the plea offer or discuss the plea offer with him. In fact, the record indicates that he was informed as the plea offer is discussed at the sentencing hearing. Appellant further did not allege that he was misinformed about the law or facts in his case. Appellant failed to allege that he would have insisted on accepting the plea offer absent trial counsel's advice. Under these circumstances, appellant failed to demonstrate that his trial counsel was ineffective. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his habitual criminal sentence was excessive, unconstitutional, unwarranted, and cruel and usual punishment. Appellant raised a nearly identical challenge to his habitual criminal adjudication on direct appeal and this court rejected that challenge. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused

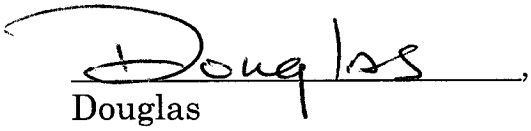
argument. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Therefore, we conclude that the district court did not err in denying this claim.

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

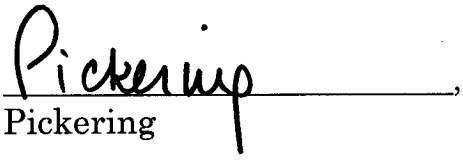
ORDER the judgment of the district court AFFIRMED.[1]



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Michael Peter Cavarretta
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[1]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.