

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC JAMAR GOODALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53701

**FILED**

**SEP 21 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; Kathy A. Hardcastle, Judge.

On September 25, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery. The district court sentenced appellant to serve a term of 24 to 72 months in the Nevada State Prison. No direct appeal was taken.

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 March 31, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he received ineffective assistance of counsel. 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 of a different outcome in the proceedings. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). In order to demonstrate prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate 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. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to take on the role of an advocate. Appellant claimed that trial counsel was only interested in securing a guilty plea and did not conduct any investigation into appellant's assertion that he was not guilty. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At the preliminary hearing, the victim positively identified appellant as one of the individuals who attacked him and robbed him of his backpack. Appellant failed to identify the evidence or witnesses a more thorough investigation would have uncovered. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Appellant received a benefit by his guilty plea as he avoided going to trial on the more serious charge of robbery. Appellant failed to demonstrate that there was a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial under these circumstances. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to visit him to go over the case. This claim was bereft of any specific facts, and thus, he failed to demonstrate that his trial counsel's performance was deficient. Id. Appellant further failed to demonstrate that he was prejudiced given the benefit he received by entry of his guilty plea and the factual circumstances. Therefore, we conclude that the district court did not err in denying this claim.

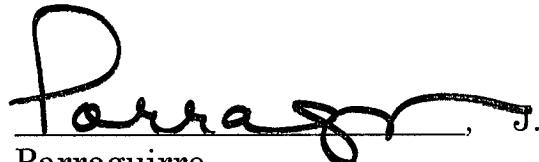
Third, appellant claimed that his trial counsel was ineffective for allowing him to enter a guilty plea when the evidence did not support the charges. Specifically, appellant claimed that there was insufficient evidence because he was not found in possession of any type of weapon or any of the victim's property. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Possession of a weapon is not an element of the crime of robbery. NRS 200.380(1). Moreover, the victim never alleged that the attackers had a weapon; instead, the victim testified at the preliminary hearing that his attackers (appellant and another individual) accosted him, punched him, and took his backpack from him by force. Possession of the victim's property at the time of arrest is likewise not an element of robbery. Id. Notably, the police report indicates that appellant led the police to the location of the backpack. Given these circumstances and the benefit he received by entry of his guilty plea, appellant failed to demonstrate that there was a reasonable probability that he would not have entered a guilty plea and would have insisted on going to trial. Therefore, we conclude that the district court did not err in denying this claim.


Finally, appellant claimed that his conviction was the result of a vindictive prosecution. Because this claim did not challenge the validity

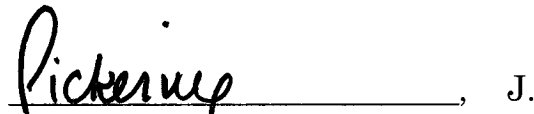
of the guilty plea or the effective assistance of counsel, this claim was not cognizable in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

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>1</sup>

  
Parraguirre

  
Douglas

  
Pickering

---

<sup>1</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.

cc: Hon. Kathy A. Hardcastle, District Judge  
Eric Jamar Goodall  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk