

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD WILLIAM HOAGLAND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53743

**FILED**

MAY 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Ineffective assistance of trial counsel

In his petition, filed on February 4, 2009, appellant claimed he received ineffective assistance of trial counsel. To prove 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 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

<sup>1</sup>This 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).

1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that his trial counsel was ineffective for failing to argue that the concentration of alcohol in his blood was too low to cause him to be impaired, even when combined with his prescription medication. Appellant failed to demonstrate that he was prejudiced. With his petition, appellant included information indicating that "significant impairment" can occur when diazepam is combined with low concentrations of alcohol. Even assuming the information appellant provided was correct, appellant's conviction did not require a person operating a vehicle to be significantly impaired; rather a person need only be operating a vehicle while under the combined influence of alcohol and a controlled substance. NRS 484.379(2)(b). Further, the documentation provided by appellant cautioned persons taking the medication not to engage in activity requiring alertness "such as driving a motor vehicle." Given that there was overwhelming evidence of guilt as appellant admitted he had been drinking and tested positive for the prescription medication, appellant failed to demonstrate that he would not have pleaded guilty and would have insisted on going to trial had his trial counsel argued he was not impaired. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to talk with him, for losing documents, and for working for the prosecution. Appellant made only bare and unsupported claims that his trial counsel committed these actions. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Given that there was overwhelming evidence of his guilt, appellant failed to demonstrate that

he was prejudiced by any of these alleged actions. Therefore, the district court did not err in denying these claims.

Third, appellant claimed that his trial counsel was ineffective for failing to seek to have his blood sample tested by an independent lab and to get an expert opinion on his blood sample. Appellant failed to demonstrate that he was prejudiced. Given the overwhelming evidence of his guilt, appellant failed to demonstrate a reasonable probability that he would have insisted on going to trial had an independent lab performed the blood test and a defense expert examined the test results. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to show a police conspiracy against him. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Nothing in the record supports appellant's contentions. Id. Appellant failed to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on going to trial had his trial counsel made these arguments. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for telling him to waive his right to a speedy trial. Appellant failed to demonstrate that he was prejudiced. As trial counsel requested continuances for more time to review the evidence, appellant failed to demonstrate that he was prejudiced by the short delay. Barker v. Wingo, 407 U.S. 514, 530 (1972); Bailey v. State, 94 Nev. 323, 324, 579 P.2d 1247, 1248 (1978). Further, appellant's guilty plea waived any alleged constitutional errors that preceded the plea. Williams v. State, 103 Nev. 227, 231, 737 P.2d 508, 511 (1987); Webb v. State, 91 Nev. 469, 470, 538

P.2d 164, 166 (1975). Therefore, the district court did not err in denying this claim.

Ineffective assistance of appellate counsel

Next, appellant claimed he received ineffective assistance of appellate counsel. To prove a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

First, appellant claimed that his appellate counsel was ineffective for failing to argue that his blood alcohol level was too low to cause him to be impaired, even when combined with his prescription medication and for failing to argue that his blood sample should have been tested by an independent lab. For the reasons discussed above, appellant failed to demonstrate that these claims had a reasonable likelihood of success on appeal. Therefore, the district court did not err in denying these claims.

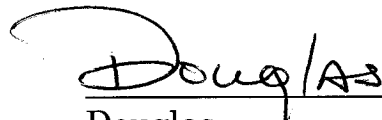
Second, appellant claimed that his appellate counsel was ineffective for working for the prosecution and for failing to copy documents for him. Appellant failed to provide any support for these claims and there is no support for them in the record. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. In addition, appellant failed to demonstrate

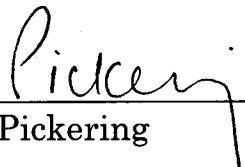
that he was prejudiced by any failure of counsel to copy documents for him. Therefore, the district court did not err in denying this claim.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Richard William Hoagland  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk