

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASMINE ANN DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53088

JASMINE ANN DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54037

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying post-conviction petitions for writs of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Docket No. 53088

In the petition filed on October 1, 2008, appellant raised eleven claims challenging the revocation of probation: (1) the State failed to prove he violated probation; (2) the State committed prosecutorial misconduct and violated appellant's right to be heard; (3) the district court abused its discretion in revoking his probation; (4) the district court was

¹These appeals have 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).

biased, reflexive, and vindictive; (5) the district court committed judicial misconduct when it used a prior unfounded probation violation against appellant; (6) the district court lacked accurate fact-finding; (7) the hearing was not impartial; (8) appellant's constitutional right to be heard was violated; (9) appellant was not allowed to cross-examine the witnesses; (10) the police illegally entered and searched his apartment; and (11) the probation officer committed misconduct and was not credible. These claims should have been raised in an appeal from an order revoking probation and are therefore outside the scope of a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(a). Therefore, the district court did not err in denying these claims.

Appellant also raised three claims of ineffective assistance of counsel regarding his probation revocation proceedings.² To state a claim of ineffective assistance of counsel sufficient to invalidate a probation revocation proceeding, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of

²We note that this court has recognized that an ineffective assistance of counsel claim will lie only where the defendant has a constitutional or statutory right to the appointment of counsel. McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). In the context of probation revocation proceedings, counsel is constitutionally required if the probationer requests counsel and makes a colorable claim that (1) he did not commit the alleged violations; or (2) that there are justifying or mitigating circumstances which make revocation inappropriate and these circumstances are difficult or complex to present. Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973); Fairchild v. Warden, 89 Nev. 524, 516 P.2d 106 (1973) (adopting the approach set forth in Gagnon). It appears that the district court conceded that appellant was entitled to the effective assistance of counsel because the district court reviewed the claims without any reference as to whether appellant was entitled to the effective assistance of counsel. Therefore, appellant's ineffective assistance of counsel claims will be reviewed on the merits.

reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome at the probation revocation proceeding would have been different. 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. 668, 697 (1984).

First, appellant claimed that counsel was ineffective for failing to contact appellant's witness who would have supported appellant's claim that he did not place the ad on Craigslist. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. First, it appears that counsel did attempt to contact the witness but was unable to reach the witness. Second, the district court did not base its decision on who placed the ad on Craigslist. Instead, the district court determined that appellant's behavior and statements made after receiving the phone call from the police officers who viewed the ad demonstrated that appellant was involved in attempting to solicit for sex. Thus, appellant failed to demonstrate a reasonable probability of a different outcome at the hearing had the witness been contacted. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to provide the district court or the State with appellant's plan for sentencing alternatives. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced because appellant failed to demonstrate what his plans for sentencing alternatives were and failed to demonstrate that a different outcome at the revocation hearing was reasonably probable had an alternative plan been presented. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claims.

Finally, appellant claimed that counsel was ineffective because trial counsel misinformed appellant regarding parole eligibility and how he would earn credits. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced because appellant failed to provide any documentation demonstrating that his credits were being calculated differently than counsel told him they would be. See id. Therefore, the district court did not err in denying this claim.

Docket No. 54037

Appellant's petition filed on February 23, 2009, was successive because he had previously filed a post-conviction petition for a writ of habeas corpus. See NRS 34.810(2). Therefore, appellant's petition was procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.810(3). Appellant failed to allege any good cause or prejudice for filing the successive petition. Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgments of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Jasmine Ann Davis
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk