

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK A. KARIGIANES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34928

FILED

MAY 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Friedman*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On June 17, 1992, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of eleven years in the Nevada State Prison. This court dismissed appellant's direct appeal.¹ Karigianes v. State, Docket No. 27551 (Order Dismissing Appeal, September 22, 1998).

On September 28, 1992, while his direct appeal was pending, appellant filed a proper person motion for modification and/or reduction of his sentence, a proper person petition for post-conviction relief, and a proper person petition for a writ of habeas corpus. The State opposed the motion and petitions. On January 8, 1993, the district court denied appellant's motion and petitions. This court dismissed appellant's subsequent appeal. Karigianes v. State, Docket No. 24155 (Order Dismissing Appeal, November 3, 1993).

On July 8, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 5, 1999, appellant amended his petition to include several additional claims.² The State opposed the

¹On direct appeal, appellant challenged his habitual criminal adjudication.

²Appellant also filed a motion for change of venue, motion for production of transcripts, and a motion to proceed in forma pauperis.

petitions. 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 September 15, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his appellate counsel was ineffective for: (1) failing to raise a claim that the district court abused its discretion in adjudicating appellant a habitual criminal; (2) failing to challenge the district court's failure to abide by sentencing procedures; (3) failing to challenge his habitual criminal adjudication on federal grounds; (4) failing to raise 25 alleged errors in the presentence report; and (5) failing to formulate the legal arguments raised in his direct appeal exactly as he presented them to her.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant's claim of ineffective assistance of appellate counsel lacked merit. Appellant failed to demonstrate that his counsel's performance was unreasonable or that he was prejudiced by her performance. See Strickland v. Washington, 466 U.S. 668 (1984). Appellant failed to support his claims with specific factual allegations, which if true, would have entitled him to relief.³ See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Second, appellant argued that his trial counsel was ineffective for: (1) failing to protect his liberty interests; (2) failing to correct the alleged errors in the presentence

³We note that appellant did challenge his habitual criminal adjudication on direct appeal. In rejecting appellant's challenge to his habitual criminal adjudication, this court stated, "The district court adjudicated appellant a habitual criminal after reviewing the presentence investigation report and listening to lengthy arguments from the state and counsel for appellant." Karigianes v. State, Docket No. 27551 (Order Dismissing Appeal, September 22, 1998). Further, appellant previously raised the issue of the alleged errors in the presentence report in his petition for post-conviction relief. In dismissing his appeal from the denial of his petition, this court concluded, "There is no indication in the record that the district court relied on impalpable or highly suspect evidence in sentencing appellant." Karigianes v. State, Docket No. 24155 (Order Dismissing Appeal, November 3, 1993).

report; (3) failing to advise him of his right to a direct appeal; and (4) failing to adequately investigate alleged Fourth Amendment violations. Based upon our review of the record on appeal, we conclude that the district court did not err in denying these claims. Appellant failed to demonstrate that his counsel's performance was unreasonable or that he was prejudiced by counsel's performance. See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Again, appellant failed to support his claims with specific factual allegations, which if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Finally, appellant argued that his due process rights had been violated because of the delay in the resolution of his direct appeal. The delay was due to the failure to prepare transcripts. We conclude that the district court did not err in determining that appellant was not entitled to relief.

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), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.

Young J.
Young
Agosti J.
Agosti
Leavitt J.
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge
Attorney General
Clark County District Attorney
Mark A. Karigianes
Clark County Clerk