

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY MICHAEL HUTSON,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 54509

FILED

MAY 10 2010

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge.

Appellant argues that the district court erred by denying his claim that trial counsel was ineffective for advising him to plead guilty to battery with a deadly weapon resulting in substantial bodily harm because the State could not prove the alternative original charges of attempted murder (with or without the use of a deadly weapon) as he had no intent to kill the victim. He further contends that because the State could not prove attempted murder, if he had proceeded to trial on the remaining alternative charges of battery by a prisoner (with or without the use of a deadly weapon), he would have received a lesser sentence than he received for the offense to which he pleaded guilty. We disagree.

To effectuate his escape from the Nevada Youth Training Center, appellant struck a staff member several times in the head with a five-pound weight. He was originally charged with multiple felonies in connection with the incident. In exchange for his plea to battery with a

deadly weapon resulting in substantial bodily harm, the State agreed to dismiss all but one of the remaining charges. By pleading guilty, appellant significantly reduced his possible sentence. At a post-conviction evidentiary hearing, appellant testified that counsel explained the terms of the plea deal, possible defenses, potential sentences for the original charges as well as the charge to which he pleaded guilty, answered all of his questions, and, even though he expressed to counsel that he did not intend to kill the victim, appellant nevertheless signed the plea agreement and entered a guilty plea to battery with a deadly weapon resulting in substantial bodily harm and escape.

Based on the record before us, we conclude that appellant failed to demonstrate that counsel's performance was deficient or prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Therefore, the district court did not err by denying appellant's post-conviction petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. J. Michael Memeo, District Judge
Lockie & Macfarlan, Ltd.
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk