

IN THE SUPREME COURT OF THE STATE OF NEVADA

PIERRE BERGERE A/K/A PIERRE
CARL BERGERE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54599

FILED

JUN 10 2010

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge.

In his petition, filed on January 26, 2009, appellant raised several claims of ineffective assistance of trial counsel. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in that there is a reasonable probability that, but for counsel's errors, petitioner would not

¹This 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).

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

Appellant first claimed that his trial counsel was ineffective in not thoroughly investigating his case, in not filing pretrial motions to obtain evidence, in not developing a strategic defense, in advising appellant to plead guilty before knowing all of the facts, and in generally failing to perform as a zealous advocate. Appellant failed to demonstrate deficiency or prejudice. These were bare, naked claims, unsupported by specific factual allegations that, if true, would have entitled appellant to an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Moreover, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty but would have insisted on going to trial. We therefore conclude the district court did not err in denying these claims.

Appellant also claimed that his trial counsel was ineffective for failing to file a direct appeal despite being requested to do so. In its response to the petition, the State conceded that an evidentiary hearing should be conducted on this claim; however, no evidentiary hearing was held. If true, appellant's claim—which was not belied by the record—would have entitled him to relief. See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. We therefore conclude the district court erred in denying the petition without conducting an evidentiary hearing on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Pierre Carl Bergere
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.