

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN PABLO FERREIRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54894

FILED

MAY 09 2011

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant argues that the district court erred in denying the claims of ineffective assistance of counsel raised in the petition filed on June 3, 2008. 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 1102, 1107 (1996). Both components of the inquiry must be shown, Strickland v. Washington, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel but review the court's

application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, appellant argues that the district court erred in denying his claim that counsel was ineffective for failing to file a direct appeal. Appellant fails to demonstrate counsel's performance was deficient. Appellant fails to demonstrate that counsel was obligated to file a notice of appeal because appellant fails to demonstrate that he expressed a desire to appeal or that there were any issues with a reasonable likelihood of success on appeal. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999). At the evidentiary hearing, counsel testified that he explained to appellant his appeal rights, but appellant never notified him that he wished to appeal the judgment of conviction. Counsel also stated that he did not know of any meritorious issues that could have been raised on appeal. The district court determined that counsel was not obligated file a notice of appeal following appellant's guilty plea, and that conclusion is supported by substantial evidence. Lader, 121 Nev. at 686, 120 P.3d at 1166. Therefore, the district court did not err in denying this claim.

Second, appellant argues that the district court erred in denying his claim that trial counsel was ineffective for failing to preserve for direct appeal the denial of a motion for a psychological examination of the victim. Appellant did not raise this issue in the proceedings below, but asserts he has good cause to raise it on appeal because the district court refused to allow post-conviction counsel to supplement appellant's proper person petition. Appellant fails to demonstrate good cause because the district court did not preclude post-conviction counsel from raising additional claims; rather, counsel informed the district court that after

reviewing the case, he did not wish to raise any claims in addition to those raised in appellant's proper person petition. As appellant fails to demonstrate good cause for his failure to raise this claim before the district court, we decline to consider it on appeal in the first instance. See McNelton v. State, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).


Next, appellant argues that his plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

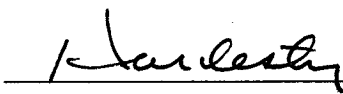
First, appellant argues that his plea was not knowingly entered because he was not aware of the denial of the motion for a psychological examination of the victim. This claim is belied by the record because the district court discussed the denial of this motion with appellant at a hearing prior to entry of his plea. Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

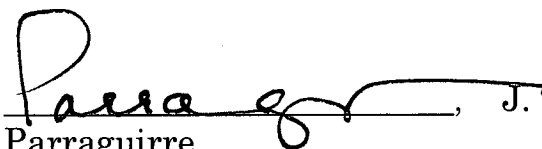
Second, appellant argues that his plea was involuntary because the district court refused a request for a continuance to allow appellant to hire different counsel. This claim is without merit. The district court allowed appellant the opportunity to hire alternative counsel, but appellant was not able to reach a representation agreement with that counsel. Therefore, the district court did not err in denying this claim.

To the extent that appellant argues that a disagreement with his counsel caused him to enter an involuntary guilty plea, appellant fails to demonstrate this claim has merit. Appellant informed the district court at the plea canvass that he had discussed the case at length with counsel and that counsel had answered all of his questions, which demonstrates that a complete breakdown of the attorney-client relationship did not occur. See Young v. State, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004). Appellant stated at the plea canvass that he was entering the guilty plea freely and voluntarily and he acknowledged in the guilty plea agreement that he was not acting under duress or coercion. Therefore, appellant is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Amesbury & Schutt
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk