

IN THE SUPREME COURT OF THE STATE OF NEVADA

TARRELL M. SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55222

FILED

SEP 10 2010

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

ORDER OF AFFIRMANCE

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

In his petition filed on November 20, 2008, appellant raised several claims of ineffective assistance of counsel and involuntary guilty plea. On appeal, appellant argues only that counsel had a conflict of interest in appellant's criminal case because, prior to the advent of the criminal case, counsel had fraudulently signed a release of claims on appellant's behalf in an unrelated civil case and, later, endorsed the civil settlement draft, retaining the entire amount.¹ To prove ineffective assistance of counsel, appellant must demonstrate that counsel was deficient and that the deficiency prejudiced appellant. Strickland v. Washington, 466 U.S. 668, 687 (1984); Hill v. Lockhart, 474 U.S. 52, 58-59

¹Appellant's remaining claims are therefore abandoned.

(1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Although both components of the inquiry must ordinarily be shown, Strickland, 466 U.S. at 697, we presume prejudice when an appellant can prove “that an actual conflict of interest adversely affected his lawyer's performance.” Cuyler v. Sullivan, 446 U.S. 335, 350 (1980); Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Appellant bears the burden of demonstrating the facts underlying his claim by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Appellant fails to demonstrate that an actual conflict of interest existed or that, if one did, it had any effect on counsel's performance. Not only does appellant fail to provide any evidence of divided loyalties, see Clark, 108 Nev. at 326, 831 P.2d at 1376, but other than that counsel's fee for services rendered in the criminal case was to be paid out of any settlement in the civil case, he demonstrates no connection between counsel's services in the two cases. Moreover, appellant presents no evidence that, “but for counsel's actions, he would not have pleaded guilty and would have insisted on going to trial.” See Kirksey, 112 Nev. at 988, 923 P.2d at 1107 (quoting Hill, 474 U.S. at 59) (emphasis omitted). Rather, the record reflects that appellant received a substantial benefit from his guilty plea because, had he gone to trial and been convicted on all 14 counts, he would have faced 5 potential life sentences. However, as a result of his plea agreement, 12 of the original 14 charges were dismissed, including all that carried potential life sentences.

For the foregoing reasons, we conclude the district court did not err in denying appellant's petition. We therefore

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. David Wall, District Judge
Law Offices of Cynthia Dustin, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk