

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOBBY SCOTT, JR. A/K/A BOBBY
SCOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55419

FILED

JUL 15 2010

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

ORDER OF AFFIRMANCE

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

In his petition and supplemental documents, appellant claimed that he received ineffective assistance of 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 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). The court need not address

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).

both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that trial counsel was ineffective for failing to call witnesses, failing to show him the case file, and failing to understand the proceedings. Appellant failed to provide any facts in support of these claims, and therefore, he failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Further, appellant waived both the preliminary hearing and his right to a trial, eliminating the need for trial counsel to call witnesses. Therefore, we conclude that the district court did not err in denying these claims.

Second, appellant claimed that his attorney at the preliminary hearing stage was ineffective because he did not know that he was representing appellant. Appellant failed to demonstrate that he was prejudiced by any confusion at the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel coerced his guilty plea by telling him that he would get two to twelve years if he went to trial, the jury would believe the victim over appellant, and the jury would not believe his self-defense story. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. In entering his plea, appellant acknowledged that it was not the product of threats and that he was not coerced into pleading guilty. Appellant was informed of the potential sentence in the plea agreement and during the plea canvass. Counsel's candid advice about the likelihood of success at trial is not deficient. Further, at the evidentiary hearing, the attorney that appellant accused of coercing his guilty plea denied telling appellant he had to enter a guilty plea or that he would lose at trial. Because

substantial evidence supports the district court's findings, we conclude that the district court did not err in denying this claim. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Fourth, appellant claimed that his trial counsel failed to challenge the confusion regarding the dates in the charging documents and the multiple cases. Appellant failed to demonstrate that his trial counsel's performance was deficient. The confusion regarding the charging documents did not render the charging documents invalid. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel failed to file an appeal on his behalf. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel testified that he was never asked to file an appeal, and appellant failed to demonstrate that trial counsel was otherwise obligated to file an appeal. Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Because substantial evidence supports the district court's findings, we conclude that the district court did not err in denying this claim. Riley, 110 Nev. at 647, 878 P.2d at 278.

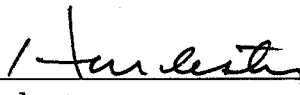
Next, appellant claimed that his guilty plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 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.

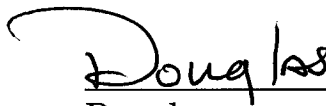
Appellant claimed that he was rushed into pleading guilty and the plea negotiations were not honored because he did not receive


concurrent time with another case. Appellant failed to carry his burden. The record shows that appellant unconditionally waived his preliminary hearing in order to accept plea negotiations and entered his guilty plea in the district court approximately two weeks later. As stated earlier, appellant acknowledged that he was not coerced into entering a guilty plea. The record further belies appellant's claim that the district court did not impose this sentence to run concurrently with his other case. Therefore, we conclude that the district court did not err in denying this claim.

The remaining claims raised in the petition and supplemental documents fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a). Therefore, we conclude that the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Bobby Scott Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk