

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEREMY SETTLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55566

FILED

SEP 29 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; Michael Villani, Judge.

In his petition, filed on March 25, 2009, appellant raised several claims of ineffective assistance of trial counsel.² 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

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).

²Appellant also claimed that: the State violated his Fourth Amendment right to be free from unreasonable searches and seizures, the State violated the Freedom of Information Act, the State committed RICO violations, he was subject to sexual discrimination, the State tampered with witnesses, and the lifetime supervision portion of his sentence was unconstitutional. These claims fell outside the scope of claims permissible in a post-conviction petition challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

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).

First, appellant claimed that trial counsel was ineffective for not contacting appellant between the arraignment and the preliminary hearing. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and insisted on going to trial had counsel met with him more frequently. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to file a motion regarding sex discrimination. Appellant claimed that because the investigators, the prosecutor, and the judge were all female, he was sexually discriminated against. Appellant failed to demonstrate trial counsel was deficient or that he was prejudiced. He failed to demonstrate that any such motion had a reasonable probability of success. See Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (holding that counsel cannot be deemed ineffective for failing to file futile motions). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for coercing him into pleading guilty by stating, "I don't care what you do, I still go home and you have to sit here." Appellant failed to demonstrate that trial counsel was deficient. This statement, on its face, does not appear to be coercive as the statement demonstrates that trial counsel was willing to go to trial or go through with the guilty plea. Further, candid advice about the choices available to a defendant is not evidence of a

deficient performance. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for ignoring information discovered after the guilty plea agreement was signed that the State lost contact with the victim. Appellant failed to demonstrate that trial counsel's performance was deficient. Once appellant signed the guilty plea agreement and admitted to the facts of the charged conduct, the victim's presence was no longer necessary. Therefore, the district court did not err in denying this claim.


Fifth, appellant claimed that trial counsel was ineffective for failing to review the presentence investigation report with him. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant failed to demonstrate any errors were contained in the presentence investigation report and that there was a reasonable probability of different outcome at sentencing had these errors been corrected. Therefore, the district court did not err in denying this claim.

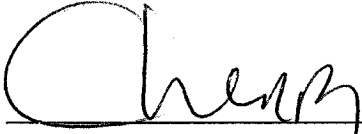
Sixth, appellant claimed that trial counsel was ineffective for failing to file a motion to suppress his confession and evidence found because of that confession and claimed that had trial counsel filed the motion he would not have pleaded guilty.³ Appellant was on parole and the confession arose out of two polygraph examinations and subsequent interviews. Appellant claims that he should have been given Miranda v. Arizona, 384 U.S. 436 (1966), warnings because these were custodial interrogations. Contrary to appellant's assertion, the United States


³To the extent that appellant raised the underlying claim as an independent ground for relief, this claim fell outside the scope of claims permissible in a post-conviction petition challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

Supreme Court has stated that interviews with probation officers are not custodial, and therefore, Miranda does not apply. See Minnesota v. Murphy, 465 U.S. 420, 430-32 (1984). It can be extrapolated that the same law applies to parole officers as they function similarly to probation officers. Accordingly, appellant failed to demonstrate that this motion had a reasonable probability of success because he failed to demonstrate that the confession should have been suppressed. Therefore, the district court did not err in denying this claim.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.⁴


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
The Eighth District Court Clerk
Jeremy Settles
Attorney General/Carson City
Clark County District Attorney

⁴We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.