

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMARIAN A. CLEMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55638

DEMARIAN ANTOINE CLEMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56077

FILED

SEP 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY J. M. D. P.
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus and a motion to withdraw a guilty plea.¹ Eighth Judicial District Court, Clark County; Valorie Vega, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b).

Docket No. 55638

In his petition filed on December 23, 2009, appellant asserted that he received ineffective assistance of trial counsel. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of

¹These appeals have 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).

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 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 his trial counsel failed to adequately advocate for appellant, failed to adequately investigate, had a cordial relationship with the State's attorney and improperly shared information with the State, failed to adequately communicate with appellant, and did not have concern for appellant's well-being. Appellant failed to support any of these claims with specific facts, and thus, he failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Therefore, we conclude that the district court did not err in denying these claims.

Second, appellant claimed that his trial counsel was ineffective for failing to sever his case from his codefendant's case. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. A motion to sever would not have been meritorious because appellant and his codefendant participated in the same acts constituting the offenses, NRS 173.135, and appellant further failed to demonstrate that there was an otherwise legally-recognizable reason requiring separate trials. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for threatening him into taking the plea deal, particularly with threats relating to federal prosecution. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. In entering his guilty plea, appellant acknowledged that his plea was not the product of threats. Further, the record indicates that federal prosecution for the firearms charge was possible, but that the State agreed not to refer him to the federal authorities. The State also agreed not to seek habitual criminal adjudication. Under these circumstances, appellant failed to demonstrate by a reasonable probability that he would not have entered a guilty plea in this case. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to let him know how much time he received at the sentencing hearing. Appellant's sentences were set forth in the judgment of conviction, and appellant failed to demonstrate that trial counsel was deficient for failing to provide further information or that he was prejudiced. The record indicates that appellant was present and the district court announced the sentences at the hearing. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for informing him that the sentence for the discharging a firearm count would run concurrently with the battery count when in fact the State retained the right to argue for consecutive sentences between these counts. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Pursuant to the plea negotiations, the State retained the right to argue for consecutive time

between the discharging a firearm count and the battery count. The terms of the plea negotiations were discussed at the plea canvass and set forth in the written plea agreement, which appellant acknowledged reading, understanding, and signing. Under these facts, appellant failed to demonstrate by a reasonable probability that he would not have entered a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

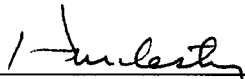
Finally, appellant claimed: (1) the prosecutor abused its discretion, (2) the witnesses lied and gave inconsistent statements, (3) his case should have been severed from the codefendant's case, (4) the detectives coerced the witnesses into changing their stories, (5) the entirety of the case against appellant was based on hearsay, (6) insufficient evidence of guilt, (7) the codefendant lied, and (8) appellant received more time than the codefendant. These claims 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, and we affirm the order of the district court denying the petition.

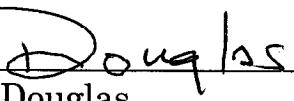
Docket No. 56077


In his motion to withdraw a guilty plea filed on March 17, 2010, appellant claimed that his plea was invalid because he received ineffective assistance of counsel, his case was improperly joined with the codefendant's case, he entered his plea fearing he would receive 40 years, the victim provided inconsistent statements, appellant did not have a gun or know that the codefendant would use a gun, he was misled by his counsel about the potential sentence, and a plethora of newly discovered

evidence proving his innocence was available. Examining the totality of the facts, we conclude that the district court did not err in determining that appellant failed to carry his burden in demonstrating that his plea was invalid. NRS 176.165; State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986). Many of the claims lack merit for the reasons discussed earlier. Appellant failed to provide specific facts supporting his claims regarding innocence, and notably, the question of guilt or innocence is not generally at issue in a motion to withdraw a guilty plea. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225-26 (1984). Therefore, we affirm the order of the district court denying the motion. Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Valorie Vega, District Judge
Demarian A. Clemons
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk