

IN THE SUPREME COURT OF THE STATE OF NEVADA

SETH STEPHENS A/K/A EDWARD
SETH TRZASKA A/K/A SETH E.
TRZASCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55700

FILED

SEP 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY D. Mout
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

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; Kathy A. Hardcastle, Judge.

In his post-conviction petition for a writ of habeas corpus, filed on October 20, 2009, appellant raised four claims of ineffective assistance of counsel. 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

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).

Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984). An appellant is entitled to an evidentiary hearing if he raises claims supported by factual assertions that, if true, would entitle him to relief, and those claims are not belied by the record on appeal. Hargrove v. State, 100 Nev. 498, 502-503, 686 P.2d 222, 225 (1984).

First, appellant claimed that his counsel was ineffective for failing to investigate claims by a number of women that prosecution witness Clifford Couser had made inappropriate advances towards them. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Any evidence of sexual harassment by Couser was inadmissible extrinsic character evidence. See NRS 50.085. Accordingly, appellant failed to demonstrate any reasonable probability that he would not have pleaded guilty had counsel performed additional investigation. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to investigate his claims that Couser had attempted to extort money from his mother. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. At the preliminary hearing, appellant's counsel at the time cross-examined Couser regarding appellant's extortion accusations, indicating that the defense counsel was aware of the allegations. Appellant does not suggest what, if any, evidence counsel would have discovered to support the allegations of extortion had counsel performed further investigation. Accordingly, appellant failed to demonstrate any reasonable probability that he would not have pleaded guilty had counsel performed any additional investigation. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to investigate an incident where Couser had asked to borrow his supervisor's keys. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Any proof that Couser had previously borrowed his supervisor's keys would have had extremely limited value in proving appellant's theory that Couser had planted a firearm in appellant's personal vehicle. In addition, in the guilty plea agreement, appellant acknowledged that by pleading guilty, he admitted to all facts supporting the elements of the offenses to which he was pleading guilty. Thus, appellant failed to demonstrate any reasonable probability that he would not have pleaded guilty had counsel performed additional investigation. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that counsel was ineffective for failing to file a motion to disqualify Judge Stewart Bell after he refused to grant an extension of time for appellant's new counsel to perform additional investigation. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Despite appellant's allegations, the fact that Judge Bell refused to grant an extension of time after appellant had requested and been assigned new counsel did not warrant disqualification. See NRS 1.230. Therefore, the district court did not err in denying this claim.

Finally, in addition to his claims of ineffective assistance of counsel, appellant also claimed that his guilty plea was coerced. Specifically, appellant alleged that the district court gave him fifteen minutes to determine whether he wished to accept the State's plea offer, and that Judge Bell informed appellant's attorney, that "when, not if but when, he finds the defendant guilty he will give him the large habitual criminal treatment." The State did not respond to this allegation in its

response, and the district court order denying appellant's petition does not address this allegation. If true, this factual allegation may demonstrate that appellant's guilty plea was not knowingly and intelligently entered. See Cripps v. State, 122 Nev. 764, 770, 137 P.3d 1187, 1191 (2006) (establishing a bright line rule prohibiting judicial involvement in the plea negotiation process); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Hargrove, 100 Nev. at 502, 686 P.2d at 225. Because this claim is not belied by the record on appeal, we conclude that the district court erred in denying this claim without an evidentiary hearing, and remand this case for a limited evidentiary hearing on this claim.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

²We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein.

cc: Hon. Kathy A. Hardcastle, District Judge
Seth Stephens
Seth E. Trzasca
Edward Seth Trzaska
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk