

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIANNE KENNETH BARBEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56946

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Tianne Barbee's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

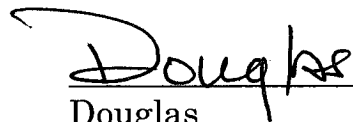
Barbee pleaded guilty to sexual assault of a child under 16 years of age on public school property. On direct appeal, his conviction was affirmed. See Barbee v. State, Docket No. 45830 (Order of Affirmance, May 26, 2006). Barbee then filed a timely post-conviction petition for a writ of habeas corpus, claiming that his plea was the product of coercion based upon an alleged beating by corrections officers. After the district court denied his petition, this court reversed and ordered the district court to hold an evidentiary hearing on Barbee's claim. See Barbee v. State, Docket No. 53219 (Order of Reversal and Remand, March 11, 2010). The district court held a hearing and denied Barbee's petition. This appeal followed.

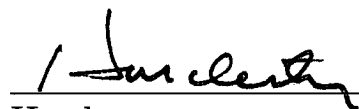
At the hearing, Barbee testified that in the hours before he pleaded guilty, he was beaten by jail officers who told him that if he did not accept the plea agreement, the officers would kill him. Barbee's trial counsel testified that Barbee never told him he had been beaten or that

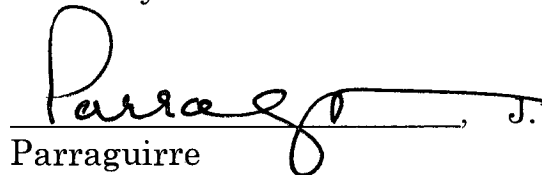
his life was threatened. Counsel only observed Barbee attempting to injure himself while in a holding cell. In a contemporaneous incident report, jail officers stated that on the morning of Barbee's plea canvass, Barbee refused to cooperate with a search, appeared to threaten an officer, and therefore had to be physically restrained. The district court found that Barbee's testimony was not credible and denied Barbee's petition. Based upon the evidence adduced at the evidentiary hearing, and the record of the plea canvass that shows Barbee eager to accept the plea and denying any coercion, we cannot conclude that the district court abused its discretion in determining that Barbee's plea was voluntarily, knowingly, and intelligently entered. See Crawford v. State, 117 Nev. 718, 721-22, 30 P.3d 1123, 1125-26 (2001).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Scott W. Edwards
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk