

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN A. HOGUE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56978

FILED

MAR 17 2011

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.<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition, filed on June 21, 2010, appellant claimed that he received ineffective assistance of counsel.<sup>2</sup> 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

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<sup>1</sup>This 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).

<sup>2</sup>To the extent that appellant raised any claims independently from his claims of ineffective assistance of counsel, those claims were not cognizable 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).

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 counsel was ineffective because he allowed appellant to enter a plea when the plea was involuntary, unintelligent, and unknowing. Appellant failed to demonstrate that counsel was deficient because appellant failed to demonstrate that the plea was entered into involuntarily, unintelligently, or unknowingly. Prior to entering his plea, appellant underwent a competency evaluation and was found to be competent. During the plea canvass, appellant acknowledged reading, signing, and discussing the plea agreement with counsel. Further, appellant acknowledged in his guilty plea agreement and/or during his plea canvass that he had discussed possible defenses with counsel, he was entering his guilty plea freely and voluntarily, and doing so was in his best interest. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that counsel was ineffective for failing to discuss potential defenses with appellant including diminished capacity and self-defense. Further, appellant claimed that counsel was ineffective for failing to investigate his mental health history, educational background, and prior drug use as potential defenses. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Diminished capacity is not a recognized defense in Nevada, Crawford v. State, 121 Nev. 744, 757, 121 P.3d 582, 591 (2005), and self-defense did not appear to be a viable defense in this case. See Runion v. State, 116

Nev. 1041, 1051, 13 P.3d 52, 59 (2000) (stating that an “honest but unreasonable belief in the necessity for self-defense does not negate malice”). Also, it appears that counsel was well aware of appellant’s mental health history, educational background, and his prior drug use as counsel had appellant evaluated for competency prior to entering the guilty plea. And, as stated above, appellant acknowledged discussing possible defenses with counsel. Moreover, appellant failed to demonstrate that had counsel discussed appellant’s other alleged defenses that he would have declined to enter a guilty plea and would have insisted on going to trial. Therefore, the district court did not err in denying these claims.

Next, appellant claimed that counsel was ineffective for failing to file any pretrial motions requesting jury instructions on manslaughter, involuntary manslaughter, diminished capacity, or self-defense. Appellant failed to demonstrate that counsel was deficient. Appellant’s guilty plea obviated the need to file pretrial motions requesting jury instructions. Also, as stated above, Nevada does not recognize diminished capacity as a defense. Crawford, 121 Nev. at 757, 121 P.3d at 591. Further, appellant received a benefit by pleading guilty as he was originally charged with first-degree murder with the use of a deadly weapon but was ultimately convicted of second-degree murder with the use of a deadly weapon. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that counsel was ineffective for failing to inform appellant of the differences between first- and second-degree murder, manslaughter, and involuntary manslaughter. Appellant failed to demonstrate that he was prejudiced because he failed to demonstrate a reasonable probability that he would have declined to enter a guilty plea

and would have insisted on going to trial had counsel explained these differences more fully. As stated above, appellant received a benefit by pleading guilty. Therefore, the district court did not err in denying this claim.


Next, appellant claimed that counsel was ineffective for failing to file any meaningful pretrial or presentence motions or writ petitions regarding appellant's mental health issues. Appellant failed to demonstrate that counsel was deficient. As stated above, prior to entering his guilty plea, counsel had appellant's competency evaluated. Further, after entering the guilty plea but prior to sentencing, counsel had appellant evaluated for mental health issues. The doctor who examined appellant determined that there was no clear evidence of a developmental or personality disorder. This psychological evaluation was presented to the district court in appellant's sentencing memorandum. Moreover, appellant failed to allege what additional motions or pretrial writ petitions counsel should have filed. Therefore, the district court did not err in denying this claim.

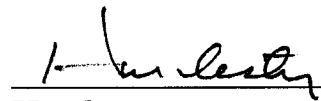
Next, appellant claimed that counsel was ineffective for failing to explain the collateral consequences of his plea, specifically, that he could face a habitual criminal enhancement in the future. Appellant failed to demonstrate that counsel was deficient. This court has not required that a defendant be informed of a collateral consequence of a guilty plea. See Palmer v. State, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002). Therefore, the district court did not err in denying this claim.

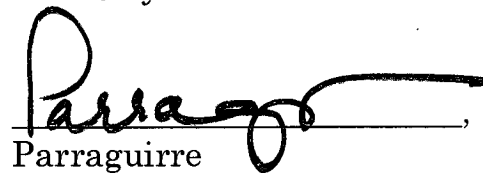
Finally, appellant claimed that he was actually innocent. Appellant failed to support this claim with specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d

222, 225 (1984). Therefore, the district court did not err in denying this claim. We

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Steven A. Hogue  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk