

IN THE SUPREME COURT OF THE STATE OF NEVADA

CODY C. LEAVITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57196

**FILED**

**JAN 12 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Malone  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Cody Leavitt's post-conviction petition for a writ of habeas corpus and motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

First, Leavitt contends that the district court abused its discretion by denying his post-conviction<sup>1</sup> motion to withdraw his guilty plea because he had a complete defense to the crime charged. We disagree.

The district court considered the documents filed by the parties, an evidentiary hearing transcript containing the testimony of Leavitt's former defense counsel, and the arguments of counsel. The district court found that Leavitt agreed to plead guilty to a count of battery with the use of a deadly weapon resulting in substantial bodily harm in this case and a count of child abuse and neglect resulting in

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<sup>1</sup>To the extent that Leavitt claims that he filed his motion to withdraw his guilty plea prior to sentencing, the record reveals that he filed his motion to withdraw the guilty plea a year after he was sentenced.

substantial bodily harm in another case to avoid having to register as a sex offender. The district court further found that Leavitt received effective assistance of counsel; Leavitt freely, voluntarily, and knowingly entered his guilty plea; and there was no manifest injustice. We conclude that the district court properly assessed the validity of Leavitt's guilty plea and claim of manifest injustice and Leavitt has failed to demonstrate that the district court abused its discretion. See NRS 176.165; Rubio v. State, 124 Nev. 1032, 1038-39, 194 P.3d 1224, 1228-29 (2008).


Second, Leavitt contends that the district court abused its discretion by denying him a full and fair evidentiary hearing. He claims that the district court (1) did not allow him to present witnesses and evidence at the time set for the hearing, (2) erred by considering the transcript from an evidentiary hearing conducted in another case, (3) erred by restricting the evidentiary hearing to the ineffective assistance of counsel claims, and (4) violated the Fourteenth Amendment's due process and equal protection clauses because "other similarly situated defendants receive evidentiary hearings on all of their meritorious claims." We disagree.


The record reveals that the district court (1) refused to require an unsubpoenaed witness to testify and Leavitt chose not to present any other witnesses or evidence, (2) granted the State's motion to consider the transcript of an evidentiary hearing in the other case because Leavitt presented nearly identical issues in that case and defense counsel's testimony in that case was relevant to the ineffective-assistance claims he raised in this case, and (3) restricted the scope of the evidentiary hearing to issues permissible under NRS 34.810(1)(a). We conclude that Leavitt has not demonstrated that the district court's decision to admit or exclude

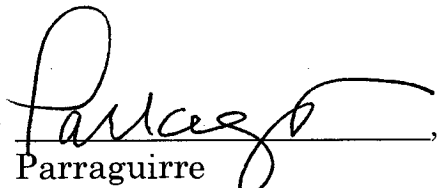
evidence during the evidentiary hearing was manifestly wrong, see Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999), or that it violated the U.S. Constitution by limiting the scope of the evidentiary hearing to issues permissible under NRS 34.810(1)(a), see State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003) (the application of the statutory procedural default rules to post-conviction habeas petitions is mandatory).

Having considered Leavitt's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Michael Villani, District Judge  
The Kice Law Group, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk