

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant/Cross-Respondent,
vs.
KEVIN JAMES FITZSIMMONS,
Respondent/Cross-Appellant.

No. 57503

FILED

MAR 07 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Lopez*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

The State appeals from the granting of respondent's April 21, 2008, post-conviction petition for a writ of habeas corpus. The State fails to demonstrate that the district court's holdings were in error.

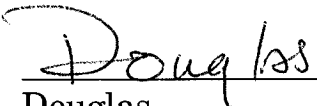
The district court found that the initial district court judge had ordered psychiatric evaluations of respondent in order to determine respondent's competency to stand trial and that the State did not object to the order. The district court further found that no such evaluation was ever conducted, the case was transferred numerous times, and respondent attempted on more than one occasion to draw counsel's and the district court's attention to the issue of competency. The record supports these findings. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Recognizing that it is a violation of the due process clause of the United States Constitution to prosecute a person while he is incompetent, Drope v. Missouri, 420 U.S. 162, 172 (1975), the district court concluded that under the factual circumstances of this case, respondent did not knowingly, intelligently and voluntarily enter into the guilty plea. See


NRS 34.810(1)(a) (providing that claims of an involuntary or unknowing guilty plea are cognizable in a post-conviction petition for a writ of habeas corpus). The district court did not err as a matter of law.¹ See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

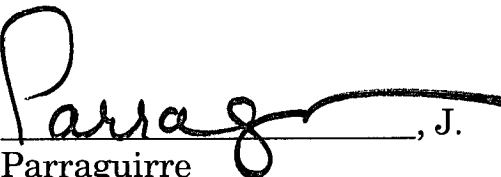
Respondent has filed a motion to file supplemental briefs. In light of our disposition of this case, respondent's motion is denied as moot.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We note that the State's sole argument in its opening brief on appeal is that the district court erred in finding that respondent received ineffective assistance of trial and appellate counsel. In its reply, the State expanded its argument to claim that the district court erred in granting the petition on the ground that the courts had lacked jurisdiction to accept a guilty plea or sentence respondent once the competency evaluations had been ordered. However, the district court's written analysis focused entirely on respondent's claims of an invalid guilty plea, not on ineffective-assistance claims or jurisdiction.