

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCKY DEWAYNE DEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57738

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Anderson*
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.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

In his petition, filed on June 14, 2010, appellant raised several claims of ineffective assistance of trial counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in that there is a reasonable probability that, but for counsel's errors, petitioner would not have

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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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 his initial counsel was ineffective because she only discussed with him one of two police reports generated in his case despite their containing conflicting information. Appellant failed to demonstrate deficiency or prejudice. Appellant identified no conflicting information between the two police reports. Further, he failed to demonstrate a reasonable probability that had counsel reviewed both reports with him, he would not have pleaded guilty but would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed that his initial counsel was ineffective for coercing him into waiving his preliminary hearing and entering a guilty plea. Appellant failed to support these claims with specific facts that, if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). We therefore conclude that the district court did not err in denying those claims.

Third, appellant claimed that his initial counsel was ineffective for recommending that he waive his preliminary hearing when the State had no evidence of intent. Appellant failed to demonstrate deficiency or prejudice. Appellant's prior vehicle-related convictions—

including one or more convictions for unlawful taking of a vehicle, burglary of a vehicle, and possession of a stolen vehicle—provided evidence of intent. NRS 48.045(2). Appellant thus failed to demonstrate that the State would not have been able to present slight or marginal evidence of his intent to burglarize the victim's vehicle. See Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). We therefore conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his initial counsel was ineffective for failing to consider his lack of intent as a defense. Appellant failed to demonstrate deficiency or prejudice. Rather, his own previous filings belie his instant claim. Appellant had prepared a proper person motion to withdraw guilty plea, which counsel filed on his behalf on May 7, 2010. In his motion, appellant stated under penalty of perjury that he had discussed with counsel his lack of intent, and counsel explained that with appellant's criminal history involving similar crimes, she did not believe that he could convince a jury of his innocence. The rendering of candid advice about the likelihood of success of a particular defense is not deficient performance. We therefore conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his initial counsel was ineffective because she took a leave of absence while his case was pending, leaving him in confusion. Appellant failed to demonstrate deficiency or prejudice. Appellant, who acknowledged that he was assigned a new public defender when his initial public defender became unavailable, failed to identify any

objectively unreasonable behavior by counsel. Further, he failed to demonstrate a reasonable probability that he would not have pleaded guilty had his initial counsel not taken leave. We therefore conclude that the district court did not err in denying this claim.

Finally, appellant claimed that counsel were ineffective because they suffered from a conflict of interest, to wit, appellant had two years earlier filed a civil lawsuit naming two different public defenders as defendants and his replacement counsel was not aware of all of the facts of the case. Appellant's claims were unsupported by specific facts that, if true, would have demonstrated that an actual conflict existed or that counsel's performance was adversely affected. See Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992); Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. We therefore conclude that the district court did not err in denying this claim.

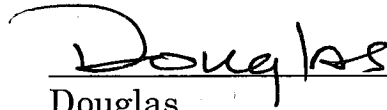
Appellant also claimed that his case was based on a sham affidavit, that the justice court lacked jurisdiction to bind him over to the district court,² that the information was not filed within 15 days of his arrest, and that the sentencing judge was biased because he based appellant's sentence on his prior bad acts. These claims were outside the scope of claims permissible in a post-conviction petition for writ of habeas corpus challenging a judgment of conviction based on a guilty plea. See

²Appellant's claim did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

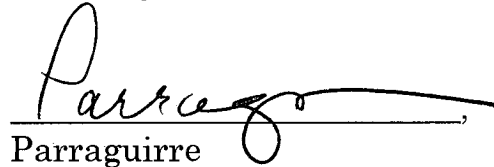
NRS 34.810(1)(a). We therefore conclude that the district court did not err in denying these claims.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Abbi Silver, District Judge
Rocky Dewayne Dean
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.