

IN THE SUPREME COURT OF THE STATE OF NEVADA

LONZELL HAY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58071

FILED

JUL 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
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 Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

In his petition filed on April 28, 2009, appellant claimed that he received ineffective assistance of trial counsel.² 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

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

²To the extent that appellant raised any claims independent of his claims of ineffective assistance of counsel or claims challenging the validity of his guilty plea, those claims were not cognizable. NRS 34.810(1)(a).

probability that, but for counsel's errors, the results of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). In order to prove prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that he 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, 466 U.S. at 697.

First, appellant claimed that his trial counsel was ineffective for failing to investigate the facts of the case properly, failing to investigate the purportedly inconsistent police reports, and failing to negotiate the matter properly. Appellant asserted that had trial counsel investigated, counsel would have discovered that the charges were unfounded, that the State could not prove his intent upon entry of the victim's residence, that the victim did not suffer substantial bodily harm when he hit her with his vehicle, and that he did not prevent the victim from phoning for help when he knocked the phone out of her hand. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to identify the evidence, beyond appellant's own statements of what happened, that trial counsel could have found or developed that would have had a reasonable probability of altering appellant's decision to enter a guilty plea in the instant case. Notably, in entering his guilty plea to one count of burglary, one count of battery with a deadly weapon causing a substantial bodily harm, and one count of preventing a victim from reporting a crime,

appellant avoided going to trial on additional charges, including one count of sexual assault. Although appellant attached copies of the many reports prepared by the police in the matter, none of the reports were inconsistent in any material way as they showed a progression of the investigation and the development of the facts and details.³ Appellant's guilty plea eliminated the need to conduct further investigation. Therefore, we conclude that the district court did not err in denying these claims.⁴

Second, appellant claimed that trial counsel was ineffective in allowing him to enter a guilty plea to the burglary count when the information failed to identify what felony he intended to commit in the victim's residence. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record belies appellant's claim regarding the information, which states that appellant intended to commit the crime of "assault or battery or any felony therein." Therefore, we conclude that the district court did not err in denying this claim.

³Further, any alleged inconsistencies would have gone to the weight of the evidence had the matter gone to trial and not to the admissibility of the evidence.

⁴To the extent that appellant claimed that his trial counsel should not have advised him to waive the preliminary hearing due to the alleged inconsistent statements in the police reports, appellant failed to demonstrate that the State would not have been able to present slight or marginal evidence supporting the original charges. See Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

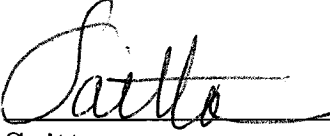
Third, appellant claimed that trial counsel was ineffective in his representation because he rushed through the case, leaving appellant confused. Appellant failed to demonstrate that he was prejudiced. Appellant was thoroughly canvassed by the district court and indicated no confusion about the plea agreement or the consequences of the plea during the canvass. Appellant failed to identify precisely how he was confused, and consequently, failed to identify how further time spent on the case would have had a reasonable probability of altering his decision to enter a guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

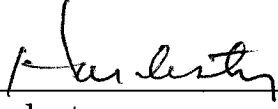
Fourth, appellant claimed that his trial counsel was ineffective for promising him that his criminal history would not be used against him at sentencing. Appellant failed to demonstrate that he was prejudiced. The plea negotiations, as set forth in the written plea agreement and discussed during the plea canvass, contained no such promise. In fact, in the written plea agreement, appellant was informed that the State reserved the "right to present arguments, facts, and/or witnesses at sentencing in support of the plea agreement." Appellant was informed that sentencing decisions were left to the discretion of the district court. Therefore, we conclude that the district court did not err in denying this claim.

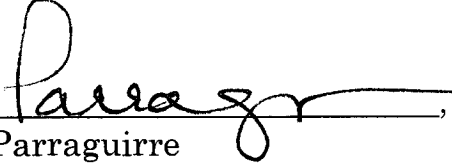
Fifth, appellant claimed that his trial counsel was ineffective for failing to present character letters from his employer and co-workers. Appellant failed to demonstrate that he was prejudiced. At the sentencing hearing, trial counsel alluded to a letter from appellant's employer and a letter from a co-worker. Appellant failed to demonstrate that he would

have received a lesser sentenced had trial counsel presented additional mitigating character evidence at the sentencing hearing. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Saitta, J.
Saitta


Hardesty, J.
Hardesty


Parraguirre, J.
Parraguirre

cc: Hon. Brent T. Adams, District Judge
Lonzell Hay
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk