IN THE SUPREME COURT OF THE STATE OF NEVADA

DE'ANDRA LADARRYL HALL A/K/A DE'ANDRA HALL
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58310

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

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; Valorie Vega, Judge.

In his petition, filed on February 1, 2011, 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 pleaded guilty and would have insisted on going to trial. Hill v.

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

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 for failing to challenge the robbery statute on the grounds that "weapon" must be considered an element of robbery. Appellant failed to demonstrate deficiency or prejudice. "Weapon" is not an element of robbery. NRS 200.380. Moreover, appellant's robbery charges in fact specified that the crimes were done "using a deadly weapon, to wit: a firearm." Thus appellant failed to state how counsel raising the claim would have affected appellant's case or his decision to plead guilty. We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to argue that the burglary charge was the result of discriminatory prosecution. 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). To merit an evidentiary hearing on this claim, appellant would have had to allege facts that showed both discriminatory effect and discriminatory intent. Salaiscooper v. Dist. Ct., 117 Nev. 892, 903, 34 P.3d 509, 516-17 (2001). To show discriminatory effect, appellant would have had to state facts to show that others similarly situated were not prosecuted for the same conduct. Id. at 903, 34 P.3d at 517. Although appellant purported to cite percentages of minorities versus Caucasians who were charged with burglary, he made no allegations as to whether the individuals within the two groups were similarly situated. We therefore conclude that the district court did not err in denying this claim.

Finally, appellant claimed that counsel was ineffective for failing to file a direct appeal despite a specific demand from appellant that counsel do so. The district court did not hold an evidentiary hearing on this claim. Appellant's claim was not belied by the record and, if true, would have entitled him to relief pursuant to NRAP 4(c). We therefore conclude that the district court erred in denying the petition without conducting an evidentiary hearing on this claim.

Appellant also claimed that he did not enter his guilty plea knowingly because he had relied on counsel's representation that he was pleading to a single count. Although the written guilty plea agreement recites the seven counts to which appellant pleaded guilty, the record did not belie his claim that he pleaded guilty in reliance upon misinformation told to him by counsel. Notably, although the court must look to the totality of the circumstances to determine the validity of a guilty plea, Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986), the record on appeal contains no transcript of appellant's guilty plea canvass. If appellant's claim were true, he would have been entitled to relief. Because the district court's implicit finding that appellant entered a knowing guilty plea is not supported by substantial evidence in the record on appeal, we remand for the district court's consideration after reviewing a transcript of appellant's guilty plea canvass.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[2]

Pickering, J.
Pickering

Rose, Sr. J.
Rose

Shearing, Sr. J.
Shearing

cc: Hon. Valorie Vega, District Judge
De'Andra Ladarryl Hall
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[2]The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.