

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD SPIVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59149

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant James Edward Spiva's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Spiva contends that the district court abused its discretion by not conducting an evidentiary hearing before denying his claim that counsel was ineffective at sentencing for arguing for the imposition of an illegal sentence. The district court found that counsel's performance was, in fact, objectively unreasonable, but that Spiva could not demonstrate prejudice because his "criminal record and the facts of this case . . . more than adequately justified the sentence imposed by the Court." See generally Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984). The district court's factual finding is supported by substantial evidence and is not clearly wrong, see Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), and because Spiva failed to demonstrate that he was entitled to relief, we conclude that the district court did not err by rejecting this claim without conducting an evidentiary hearing. See NRS 34.770; Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

Second, Spiva contends that the district court violated his right to due process at the evidentiary hearing by questioning him about a

claim pertaining to the validity of his nolo contendere plea that the court already “procedurally dismissed.” Spiva, however, expressly “refused to attach said transcript due to the self-serving actions of the [district court].” Therefore, we are unable to meaningfully review the claim that his plea was invalid. See Thomas, 120 Nev. at 43 & n.4, 83 P.3d at 822 & n.4 (“Appellant has the ultimate responsibility to provide this court with ‘portions of the record essential to determination of issues raised in appellant’s appeal.’” (quoting NRAP 30(b)(3))); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”).¹ Additionally, Spiva fails to offer any persuasive argument or authority in support of his contention that the district court violated his right to due process at the evidentiary hearing. See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Therefore, we conclude that Spiva is not entitled to relief on this ground.

Third, Spiva contends that the district court erred by denying his claim that his right to a speedy trial was violated without conducting an evidentiary hearing. We disagree. This claim falls outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 647, 28 P.3d 498, 523 (2001) (“If first-time applicants for post-conviction habeas relief fail to argue specifically that their trial or appellate counsel were ineffective in regard

¹In his habeas petition, Spiva claimed that his nolo contendere plea was the result of coercion and the promise of probation. In its order denying his petition, the district court found that Spiva’s claim was belied by the record and, at the evidentiary hearing, he “failed to present any credible and competent evidence to support it.”

to an issue or to show good cause for failing to raise the issue before, that issue will not be considered, pursuant to NRS 34.810.”). Therefore, we conclude that the district court did not err by rejecting this contention.

Fourth, Spiva contends that the district court erred by not finding that appellate counsel was ineffective for failing to challenge the constitutionality of the lifetime supervision statutes. See NRS 176.0931; see also NRS 213.1245; NRS 213.1255. Spiva specifically claims that lifetime supervision violates the Double Jeopardy Clause and his right to travel under the Equal Protection Clause of the United States Constitution. The district court concluded that appellate counsel’s performance was not deficient because Spiva’s claim did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court’s finding is supported by substantial evidence and is not clearly wrong, and Spiva has not demonstrated that the district court erred as a matter of law. See Lader, 121 Nev. at 686, 120 P.3d at 1166; see also Nevada Dep’t Prisons v. Bowen, 103 Nev. 477, 480, 745 P.2d 697, 699 (1987) (citing Missouri v. Hunter, 459 U.S. 359, 366 (1983)); Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002). Therefore, we conclude that the district court did not err by rejecting this claim.

Finally, Spiva contends that the district court erred by not finding that trial counsel was ineffective for failing to advise him about the sex offender registration requirements pursuant to NRS 176.0927 and that appellate counsel was ineffective for failing to raise the issue on direct appeal. The district court found that Spiva failed to demonstrate that he was prejudiced by the alleged omission, see Strickland, 466 U.S. at 694; Kirksey, 112 Nev. at 987, 923 P.2d at 1107, and that his plea was

entered knowingly, voluntarily, and intelligently. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court's findings are supported by substantial evidence and are not clearly wrong, and Spiva has not demonstrated that the district court erred as a matter of law. See Lader, 121 Nev. at 686, 120 P.3d at 1166. We also conclude that appellate counsel was not ineffective because Spiva's claim did not have a reasonable probability of success on appeal. See Kirksey, 112 Nev. at 998, 923 P.2d at 1114; see also NRS 176.0927(2); Nollette v. State, 118 Nev. 341, 348-50, 46 P.3d 87, 92-93 (2002). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk