

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ILANDERS STREET,
Appellant,
vs.
WARDEN, L.C.C.; AND THE STATE OF
NEVADA,
Respondents.

No. 59244

FILED

DEC 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On appeal from the denial of his October 30, 2008, petition, appellant argues that the district court erred in denying his claims of ineffective assistance of trial counsel without first conducting an evidentiary hearing. 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. 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by

the record, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

First, appellant argues that counsel was ineffective for failing to object to the district court's adjudication of appellant as a habitual criminal. Appellant failed to demonstrate deficiency or prejudice. Appellant failed to state any grounds for an "objection" to his adjudication as a habitual criminal. To the extent appellant claims that counsel failed to argue against habitual-criminal status, his claim is repelled by the record. Counsel argued at the sentencing hearing against habitual-criminal status, pointing out that little of appellant's criminal record reflected violence and asking the court to focus on the three years preceding the instant crime rather than appellant's criminal record spanning four decades. We therefore conclude that the district court did not err in denying this claim.¹

Second, appellant argues that counsel was ineffective for failing to request a competency evaluation because appellant had an

¹To the extent appellant argues that the district court erred in adjudicating him a habitual criminal, this claim is outside the scope permissible where the conviction was the result of a guilty plea. NRS 34.810(1)(a). Moreover, as a separate and independent ground to deny relief, "NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court." Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Appellant does not claim that the district court failed to exercise its discretion.

Appellant also argues that counsel was ineffective for failing to object to the sentence as cruel and unusual. This argument was not raised below and we therefore decline to consider it on appeal. Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

extensive history of substance abuse, had been diagnosed with mental illnesses, and was taking psychotropic medications while in jail. Appellant's bare, naked claim failed to demonstrate deficiency or prejudice. Appellant did not allege any specific facts that would indicate he was unable to consult with counsel or that he lacked a rational or factual understanding of the proceedings against him. Melchor-Gloria v. State, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983); see also Boyde v. Brown, 404 F.3d 1159, 1165-67 (9th Cir. 2005) (concluding that defendant's mental illness did not raise doubts as to his competence), as amended on reh'g, 421 F.3d 1154 (9th Cir. 2005); Ybarra v. State, 103 Nev. 8, 13, 731 P.2d 353, 356-57 (1987) (noting that medications can render a defendant competent). We therefore conclude that the district court did not err in denying this claim.²

Third, appellant argues that counsel was ineffective for failing to investigate his psychological background in order to establish that appellant lacked the requisite criminal intent because of his mental illness and severe drug addiction. Appellant's bare, naked claim failed to demonstrate deficiency or prejudice. Appellant did not allege any specific facts that would indicate that he was in a delusional state such that he could not know or understand the nature and capacity of his act or could not appreciate the wrongfulness of his act. See Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84-85 (2001). Moreover, appellant acknowledged at


²To the extent appellant argues that the trial court should have, sua sponte, ordered a competency evaluation, this claim is outside the scope permissible where the conviction was the result of a guilty plea. NRS 34.810(1)(a). Moreover, as a separate and independent ground to deny relief, appellant failed to allege specific facts in support of this claim that, if true, would have entitled him to relief.

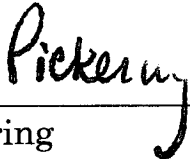
his sentencing hearing that he should have known that the property was stolen. We therefore conclude that the district court did not err in denying this claim.


Fourth, appellant argues that counsel was ineffective for presenting only a written report without live testimony at the sentencing hearing regarding an expert's clinical impression of appellant, appellant's troubled family background, and the effects of substance abuse. Appellant's bare, naked claim failed to demonstrate deficiency or prejudice. Appellant did not allege any specific facts as to what the expert's clinical impression would be, what reference he would make to appellant's family background, what he would say were the effects of substance abuse on a person, or how any of it would have impacted the outcome of the sentencing hearing. We therefore conclude that the district court did not err in denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk