

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD GRAVES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59709

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
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; Douglas W. Herndon, Judge.

In his petition filed on March 4, 2011, and his amended petition filed on May 25, 2011, appellant claimed that he received ineffective assistance of counsel. 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 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

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).

the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that counsel coerced him into pleading guilty by promising him that he would receive probation if he pleaded guilty but would receive the maximum sentence if he went to trial. Appellant failed to demonstrate that he was prejudiced. Appellant's guilty plea was entered as a result of plea negotiations in which the State stipulated to probation. In the plea agreement and during the plea canvass, appellant acknowledged that no one threatened him or promised him that he would receive probation, that sentencing was in the discretion of the district court, and that he had read and understood the plea agreement. The plea agreement and the district court informed appellant of the potential sentences he faced. Appellant's mere subjective belief as to a potential sentence, unsupported by any promise from the court or the State, is not sufficient to invalidate his guilty plea as involuntary and unknowing. Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Furthermore, appellant received significant benefits in pleading guilty—the State dismissed charges of burglary, malicious destruction, and assault with a deadly weapon, and also stipulated to probation unless appellant failed to appear at sentencing. Accordingly, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel failed to inform him that he could withdraw his guilty plea and go to trial if he did not receive probation. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. To the extent that appellant claimed that the plea agreement was breached when he did not receive probation, appellant failed to demonstrate a breach. The written guilty

plea agreement included a stipulation to probation, but this stipulation was contingent on appellant's appearance in court on the initial sentencing date. The plea agreement informed appellant that if he failed to appear at the scheduled sentencing hearing, the State would regain the full right to argue for any lawful sentence. Because appellant failed to appear at sentencing, the stipulation was no longer binding and the State could seek a sentence of imprisonment. See Sparks v. State, 121 Nev. 107, 112, 110 P.3d 486, 489 (2005) (noting that a defendant who signs a written plea agreement with a failure to appear clause "should have reasonably expected that his failure to appear at the first sentencing hearing . . . would cause the State to invoke the right to argue"). To the extent that appellant claimed that counsel should have moved to withdraw his guilty plea after appellant was sentenced to imprisonment, he failed to identify a sufficient basis for withdrawing his plea. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that counsel failed to investigate the charges against him, obtain medical records and photographs regarding his wife's injuries, or consult with a medical expert. Appellant failed to demonstrate deficiency or prejudice, as he did not support these claims with specific facts that, if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). While appellant alleged generally that further investigation would have revealed that his wife was lying about her injuries, he failed to provide any support for his conclusory assertions and did not explain how further investigation would have affected his decision to plead guilty. As stated above, appellant received a significant benefit in pleading guilty. Moreover, the charges to which he pleaded guilty—aggravated stalking and assault with

a deadly weapon—were based on his threats and harassment of his wife, as well as his ramming his car into the car of his wife's friend, and thus the charges did not depend on his wife's physical injuries. Accordingly, we conclude that the district court did not err in denying these claims.

Fourth, appellant claimed that counsel failed to advise him of viable defenses that could negate the element of intent. Specifically, appellant asserted that he gave counsel a letter written by his wife stating that appellant was on pain killers at the time of the offenses and needed mental health treatment, but counsel never informed the State or the court about this letter. Appellant failed to demonstrate that he was prejudiced. Appellant failed to explain how counsel's failure to give the letter to the State or the district court affected his decision to plead guilty. Thus, appellant did not show that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. Further, as discussed above, appellant received a substantial benefit in exchange for his guilty plea. To the extent that appellant claimed that he was not informed of the elements of the offenses, this claim is belied by the record, as he was informed of the elements in his written plea agreement and at the plea canvass. We therefore conclude that the district court did not err in denying these claims.

Fifth, appellant claimed that counsel failed to object to factual errors in the presentence investigation report and in the State's arguments at sentencing. Specifically, he contended that the State incorrectly argued that the instant offenses occurred after he was released on parole in California, when in actuality he committed the instant offenses prior to his conviction in California. Appellant failed to demonstrate prejudice, as the district court pointed out the State's error

and noted that the instant offenses predated the California case. Further, the district court expressly stated that appellant's sentence was based solely on appellant's conduct in the instant case and not the California case. As to appellant's general claim that there were errors in his presentence investigation report, he did not identify any specific errors. Thus, he failed to demonstrate deficiency or prejudice. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. We therefore conclude that the district court did not err in denying these claims.

Sixth, appellant claimed that counsel should have argued for additional presentence credits for time served in California while awaiting extradition to Nevada. He appeared to argue that he was arrested in California and placed in prison for the sole purpose of being extradited to Nevada on the instant charges. However, the record indicates that he was actually convicted in California and sentenced to prison on the California conviction prior to his extradition to Nevada, and appellant failed to support his claim with any specific factual allegations that would entitle him to relief.² See id.; NRS 176.055(1); Nieto v. State, 119 Nev. 229, 232, 70 P.3d 747, 748 (2003) (“[A] defendant is entitled to credit for time served in presentence confinement in another jurisdiction when that confinement was solely pursuant to the charges for which he was ultimately convicted.”). Thus, the district court did not err in denying this claim.

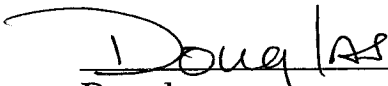
Finally, appellant claimed that counsel failed to file a direct appeal or inform him of his right to appeal. We conclude that appellant


²We note that, while his petition was pending, the district court amended his judgment of conviction to reflect additional presentence credits. Thus, this claim appears to be moot.

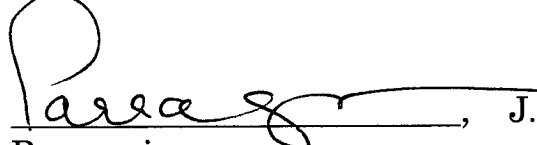
failed to demonstrate that counsel's performance was deficient or that he was prejudiced. The district court held an evidentiary hearing on this claim, at which appellant acknowledged that he had not asked counsel to file a direct appeal after sentencing. Appellant also acknowledged that the written plea agreement informed him of his appellate rights. Thus, this claim is belied by his own statements, and the district court did not err in denying this claim.

For the foregoing reasons, we conclude that the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

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.

cc: Hon. Douglas W. Herndon, District Judge
Richard Graves
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk