

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARL VON BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60196

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Hedges
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 November 11, 2011, appellant claimed that he received ineffective assistance from 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. 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 counsel was ineffective for failing to adequately investigate his case. Appellant failed to demonstrate

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

deficiency or prejudice, because he failed to support this claim with specific facts that, if true, would have entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). Specifically, appellant did not state what a more thorough investigation would have revealed or how it affected his decision to plead guilty. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Further, appellant conceded in his petition that, knowing that anything can happen in a jury trial, he opted to "play it safe" and take the plea offer. Accordingly, appellant failed to demonstrate that, but for counsel's alleged error, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

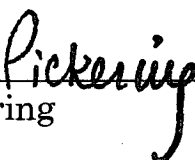
Second, appellant claimed that counsel was ineffective because he misrepresented the guilty plea, thereby rendering it involuntary and unknowing. Specifically, appellant claimed that counsel said (1) the court could not run his sentence consecutive to appellant's federal sentence and (2) because it was a stipulated sentence, the court had to render a sentence of two to five years even if appellant breached the plea agreement. Appellant failed to demonstrate prejudice. Appellant was advised in writing in his guilty plea agreement and acknowledged orally at the plea colloquy that the court could sentence him to a term of up to 15 years, the sentence to be imposed was completely within the discretion of the district court, and he was not made any promises or guaranteed any sentence in exchange for his plea. Accordingly, appellant failed to demonstrate that, but for counsel's alleged error, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

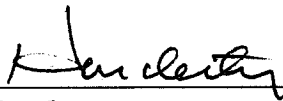
Appellant also raised several claims that were outside the scope allowed in a post-conviction habeas petition challenging a judgment of conviction based upon a guilty plea: the State violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose evidence favorable to

the defense, evidence which by his own admission appellant told counsel of prior to pleading guilty; insufficient evidence supported his conviction; his sentence was cruel and unusual; and he was innocent of the crimes. NRS 34.810(1)(a). We therefore conclude that the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

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

²To that extent that appellant claimed that his counsel in a different but contemporaneous case provided ineffective assistance in this case, appellant's claims were bare and naked, and the district court did not err in denying those claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225. To the extent that appellant claimed that counsel provided ineffective assistance in that contemporaneous case, appellant must raise those claims in a post-conviction petition for a writ of habeas corpus filed in the district court under that case number in the first instance. We express no opinion as to whether petitioner could meet the procedural requirements of NRS chapter 34.

We 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.