

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL HENRY MELTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60224

FILED

SEP 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on November 3, 2011, appellant claimed that he received ineffective assistance of trial and appellate counsel. To prove ineffective assistance of trial counsel, a petitioner must demonstrate that 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). In order to prove prejudice regarding the performance of appellate counsel, a petitioner must demonstrate that "the

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<sup>1</sup>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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

omitted issue would have a reasonable probability of success on appeal.” Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697-88 (1984).

First, appellant claimed that his trial counsel was ineffective for failing to conduct an adequate pretrial investigation into possible defenses. Appellant failed to support his claim with specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). He did not identify any defenses or explain what trial counsel should have investigated. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to communicate with him, and that counsel had a conflict of interest because counsel told him that “he was going to prison and [counsel] thought it was funny.” Appellant failed to demonstrate that he was prejudiced, as he failed to show that there was a reasonable probability that, with further communication with counsel, he would not have entered a guilty plea and would have insisted on proceeding to trial. Appellant also failed to demonstrate an actual conflict of interest that adversely affected counsel’s performance. See Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel improperly advised him to plead guilty to grand larceny even though the State could not prove the elements of the grand larceny offense. Appellant failed to show that counsel’s performance was deficient or that he was prejudiced. Appellant was originally charged with burglary and attempted grand

larceny, but he pleaded guilty to a fictitious charge of grand larceny. In the written guilty plea agreement and during the plea hearing, appellant acknowledged that the grand larceny plea was fictitious and that he was waiving any defects as to that charge because the plea bargain was in his best interest. Because appellant was aware of the fictitious nature of the plea but entered the plea anyway, his claim is without merit. Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for advising him that he was not eligible for large habitual criminal treatment and would not receive a sentence of more than 8 to 20 years in prison. Appellant failed to demonstrate that he was prejudiced. The plea agreement informed appellant of the potential penalties and the fact that sentencing decisions were left to the discretion of the district court. Appellant was personally canvassed about the potential penalties he faced, he affirmed his understanding that he could be adjudicated under the large habitual criminal statute, and he affirmatively acknowledged that his decision to enter a guilty plea was not motivated by any promises not contained in the written guilty plea agreement. Appellant's mere subjective belief regarding sentencing was insufficient to invalidate his decision to enter a guilty plea. Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to review the presentence investigation report with him before sentencing and for failing to object to erroneous facts about his criminal history. Appellant failed to demonstrate that he was prejudiced, as he did not show that review of the report with his counsel would have had a

reasonable probability of altering the outcome at sentencing. Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that his trial counsel was ineffective at sentencing for stipulating that the State had presented proof of the prior convictions although they were not properly filed. Appellant further claimed that counsel should have objected to the district court's apparent acceptance of the prior judgments of conviction simply because other district court judges had accepted the priors. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant did not demonstrate that the prior judgments of conviction were improperly filed or constitutionally infirm. Furthermore, this court concluded on direct appeal that the State sufficiently proved eight of his prior convictions. Melton v. State, Docket No. 55709 (Order of Affirmance, November 8, 2010). Thus, the district court did not err in denying this claim.

Seventh, appellant claimed that his trial counsel was ineffective for failing to argue that the habitual criminal statute is unconstitutional, and for failing to argue that the State selectively prosecuted him as a habitual criminal when other defendants with similar records were not treated as habitual criminals. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant provided no argument for how the habitual criminal statute was unconstitutional, nor did he demonstrate that the State had chosen to selectively prosecute him as a habitual criminal. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his trial counsel was ineffective for failing to argue that he should be sentenced under the small habitual

criminal statute rather than the large habitual criminal statute. This claim is belied by the record, which reflects that counsel did make this argument at sentencing. Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his appellate counsel was ineffective for failing to argue on appeal that trial counsel had a conflict of interest and that the district court should have held a conflict-of-interest hearing. Appellant failed to demonstrate deficiency or prejudice, as he did not show that trial counsel had a conflict of interest. Therefore, the district court did not err in denying this claim.

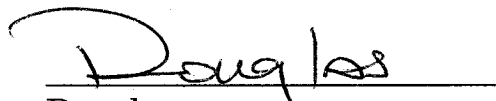
Tenth, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court violated appellant's constitutional rights when it refused to allow him to hire private counsel and did not advise him of his right to self-representation. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. The week before his trial date, appellant informed the district court that he had fired his appointed counsel four months earlier and that he wanted to retain private counsel. Because the trial date had already been delayed more than nine months due in large part to appellant's failure to appear at a scheduled pretrial proceeding, the district court refused to continue the trial. The record shows that appellant had ample time to retain private counsel before trial but failed to do so. Because the record belies his claim that the district court denied him his right to retain private counsel, appellate counsel was not ineffective for failing to raise this argument on appeal. The record also belies appellant's claim regarding self-representation, as there was no indication that he waived


trial counsel and requested self-representation. Therefore, the district court did not err in denying these claims.

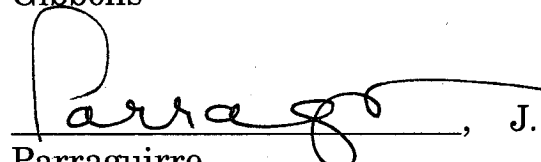
Finally, appellant claimed that the cumulative effect of ineffective assistance of counsel warranted relief. Because appellant failed to make any meritorious claims of ineffective assistance of counsel, we conclude that his claims, considered either individually or cumulatively, do not warrant relief.

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.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

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