IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES B. HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60289

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; Valorie J. Vega, Judge.

In his petition filed on November 16, 2011, appellant claimed that he received ineffective assistance of trial 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

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

Appellant also seeks to appeal from orders of the district court denying his motion to proceed in forma pauperis, motion for appointment of counsel, request for evidentiary hearing, and motion to amend his post-conviction petition for a writ of habeas corpus. We conclude that the district court did not abuse its discretion in denying these motions and requests. NRS 34.750(1), (5); NRS 34.770.

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 that counsel coerced him into entering a guilty plea because counsel knew that he had a heroin addiction, told him that he would receive a sentence of three years in prison if he pleaded guilty, and failed to adequately communicate with him. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant acknowledged in the written plea agreement that no one had promised or guaranteed a particular sentence and that he was not under the influence of any substance that would impair his ability to understand the proceedings. The plea agreement also informed appellant of the possible sentences for each count, stated that both parties agreed to recommend that the sentence for each count run consecutively, and stated that the sentence would be determined by the district court. During the plea canvass, appellant acknowledged that he had read and fully understood the written plea agreement, that counsel had been available to assist him and answer all of his questions, and that he was entering his plea voluntarily. Thus, the record belies his claim that he did not understand the proceedings due to a heroin addiction. Moreover, 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. Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). As to his assertion about counsel's inadequate communication, he failed to demonstrate prejudice,

as he did not show that there was a reasonable probability that he would not have pleaded guilty in the instant case if counsel had further communicated with him. Notably, he received a benefit by pleading guilty, in that the State agreed not to pursue habitual criminal adjudication in exchange for his plea. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to investigate and call witnesses at the preliminary hearing to testify that he did not know that the check was counterfeit.[2] Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a determination of the guilt or innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted). Appellant failed to demonstrate that the outcome of the preliminary hearing would have been different had counsel investigated and called witnesses at the hearing. Testimony was presented at the preliminary hearing that appellant entered a casino and cashed a check that was made out to him from the account of Perini Building Company. Perini employees testified that appellant was not and had never been an employee of Perini and that the check was not issued by Perini. The evidence presented at the

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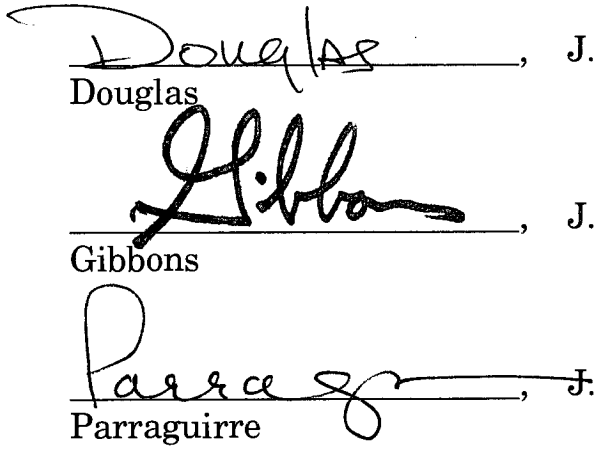
[2]To the extent that appellant claimed separately that there was insufficient evidence adduced at the preliminary hearing to support his convictions for burglary, forgery, and theft, this claim is outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction arising from a guilty plea. NRS 34.810(1)(a).

preliminary hearing satisfied the probable cause requirement. Therefore, 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

cc: Hon. Valorie J. Vega, District Judge
Charles B. Harris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]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.