

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK K. BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60540

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anger*
DEPUTY CLERK

DERRICK K. BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60541

DERRICK K. BRADLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60542

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying a post-conviction petition for a writ of habeas corpus filed in three district court cases.¹ Eighth Judicial District Court, Clark County; Doug Smith, Judge. We elect to consolidate these appeals for disposition. NRAP 3(b)(2).

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

In his petition filed on November 29, 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 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 trial counsel was ineffective for failing to adequately object to the State's identification procedure at the grand jury hearing. Appellant failed to demonstrate that counsel's performance was deficient, as counsel filed a pretrial petition for a writ of habeas corpus arguing that the State's identification procedure was impermissibly suggestive. To the extent that appellant claimed that counsel should have appealed the order denying the pretrial petition, there is no right to an interlocutory appeal from such an order. Gary v. Sheriff, 96 Nev. 78, 80, 605 P.2d 212, 214 (1980). Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel falsely informed him that she had contacted his alibi witnesses and that they were unwilling to testify, which led him to plead guilty. Appellant failed to demonstrate that counsel's performance was deficient. At the evidentiary hearing on this claim, counsel testified that appellant had informed her a week before trial that his girlfriend and his aunt would provide an alibi for him. Although appellant decided to plead guilty, counsel attempted to contact his alibi witnesses anyway. Appellant's girlfriend could not vouch

for his whereabouts at the time of the offenses, and counsel was unable to contact appellant's aunt, who had previously been interviewed by the defense but had not volunteered an alibi. Thus, contrary to appellant's claim, counsel did contact, or attempt to contact, his alibi witnesses before he pleaded guilty. Accordingly, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel should have obtained a dental expert to rebut the State's theory that he committed the offenses. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. He failed to explain how a dental expert would have assisted the defense or affected his decision to plead guilty. See Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to request a psychological examination before, rather than after, appellant entered his guilty pleas. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant did not show that he was unable to understand the proceedings or the consequences of his pleas, nor is there any indication in the record that appellant suffered from a mental illness that would impair his ability to understand the legal proceedings before him. See NRS 178.400; see also Godinez v. Moran, 509 U.S. 389, 396-97 (1993). Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel was ineffective for failing to file a motion to disqualify the district court judge based on bias. Specifically, appellant claimed that the judge was biased because he denied appellant's motions and made "several uneasy comments." Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. The judge's rulings and comments did not

demonstrate bias, see Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998), and thus a motion to disqualify on this basis would not have been successful. Because counsel could not be ineffective for failing to file a futile motion, Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978), the district court did not err in denying this claim.

Sixth, appellant claimed that trial counsel coerced him into consolidating his guilty pleas. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant expressly asked the district court to take his pleas and sentence him in all three of his cases, and he also asked to be represented by trial counsel in all of his cases and waived the presence of his other attorneys when entering his pleas. Thus, his claim of coercion is belied by the record, and the district court did not err in denying this claim.

Next, appellant claimed that the district court abused its discretion in denying his presentence motion to withdraw his guilty plea, and his pleas were invalid because he was not informed of the dangers of consolidation and his other two attorneys were not present to advise him. These claims were raised and rejected on direct appeal. Bradley v. State, Docket Nos. 56107, 56110, 56111 (Order of Affirmance and Limited Remand, January 13, 2011). This court concluded that appellant's pleas were entered voluntarily, knowingly, and intelligently. Thus, the doctrine of the law of the case prevents further litigation of these issues. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

Appellant also claimed that the State committed prosecutorial misconduct during the grand jury hearing. This claim was outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a). Furthermore, appellant waived this claim when he entered his guilty plea. See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164,

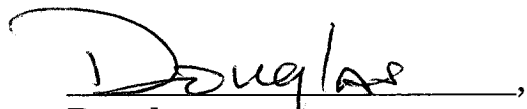
165 (1975) (stating that the entry of a guilty plea generally waives any right to appeal from events occurring prior to the entry of the plea).


Finally, appellant claimed that appellate counsel was ineffective for failing to raise all of the above-mentioned claims on direct appeal. Appellant failed to demonstrate that appellate counsel's performance was deficient or that he was prejudiced. His claims of ineffective assistance of trial counsel were appropriately raised in his post-conviction petition rather than on direct appeal, see Pellegrini v. State, 117 Nev. 860, 882-83, 34 P.3d 519, 534 (2001), and, as discussed above, his other claims were either rejected on direct appeal or waived. We therefore conclude that the district court did not err in denying this claim.

For the foregoing reasons, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Doug Smith, District Judge
Derrick K. Bradley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk