

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN JOSE CHAVEZ,
Appellant,
vs.
DWIGHT NEVEN, WARDEN,
Respondent.

No. 60691

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Lindeman*
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 Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

In his petition filed on October 7, 2011, appellant claimed that his guilty plea was not knowingly and voluntarily entered because he was not informed that he would have to serve a minimum term of one year on each count before being eligible for parole. Appellant's claim is belied by the record, as he was informed of the minimum sentence for each count in the written plea agreement and during the plea canvass. Furthermore, the district court does not have a duty to advise a defendant about parole eligibility because parole is not a direct consequence of his plea. See Anushevitz v. Warden, 86 Nev. 191, 194-95, 467 P.2d 115, 117-18 (1970);

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).

Little v. Warden, 117 Nev. 845, 849 n.9, 34 P.3d 540, 543 n.9 (2001). Therefore, the district court did not err in denying this claim.

Next, appellant claimed that he received ineffective assistance of trial and appellate counsel. To prove ineffective assistance of counsel, 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, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). To demonstrate prejudice sufficient to invalidate a judgment of conviction based on a guilty plea, the petitioner must show that, but for trial 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). To demonstrate prejudice for appellate counsel's failure to raise an issue on appeal, the petitioner must show that "the 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—deficiency and prejudice—must be shown. Strickland, 466 U.S. at 697.

First, appellant claimed that trial counsel was ineffective for failing to object or file a motion to withdraw the guilty plea when the State breached the plea agreement by arguing for a sentence in excess of one year on each count. Appellant failed to demonstrate deficiency or prejudice because his underlying claim of breach of the plea agreement is belied by the record. The plea agreement explicitly allowed the State to argue for any "appropriate sentence" at sentencing, and the sentences

argued by the State were within the statutory ranges for the offenses. Because the State did not breach the plea agreement, counsel could not be ineffective for failing to file a motion to withdraw on this basis. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Thus, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel had a conflict of interest because she had previously served as appellant's parole and probation officer. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant did not provide any specific factual allegations as to how counsel's former employment created an actual conflict of interest or adversely affected counsel's performance. See Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992); see also Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel and appellate counsel were ineffective for failing to turn over the entire case file to him, which prevented him from effectively litigating this post-conviction petition. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant did not identify the documents that he did not receive, nor did he explain how counsel's failure to deliver him the case file after his conviction affected the outcome of the proceedings. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Therefore, the district court did not err in denying this claim.

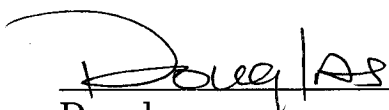
Fourth, appellant claimed that appellate counsel was ineffective for failing to raise on direct appeal the issue of the State's


breach of the plea agreement. Because appellant's underlying claim of breach was belied by the record, appellant could not show that counsel's performance was deficient or that he was prejudiced. See id. Therefore, the district court did not err in denying this claim.

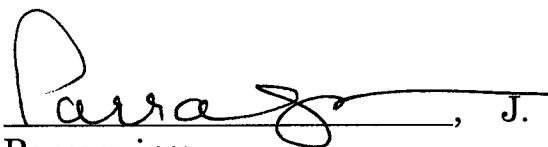
Finally, appellant claimed that the cumulative effect of the ineffective assistance of his trial counsel and appellate counsel warranted relief. However, because he failed to demonstrate that he was denied the effective assistance of counsel, this claim lacks merit.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Chief Judge, Second Judicial District Court
Juan Jose Chavez
Attorney General/Carson City
Washoe District Court Clerk