

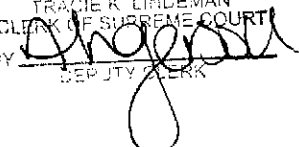
IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN G. CARTER,  
Appellant,  
vs.  
ROBERT LEGRAND, WARDEN,  
Respondent.

No. 62845

FILED

DEC 12 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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> Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

In his petition filed on August 1, 2011, appellant claimed that he received ineffective assistance of 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, the outcome of the proceeding 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

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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).

(1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.

First, appellant claimed that trial counsel was ineffective for failing to adequately and timely present a motion for continuance prior to appellant's sentencing hearing. Specifically, appellant claimed that trial counsel's failure to file the motion until a few days prior to the hearing and failure to explain to the district court the extent of the conflict between counsel and appellant led to the district court denying the motion. Appellant wanted a continuance of the sentencing hearing because he was attempting to retain new counsel because he did not understand what a ten-year minimum sentence meant and was thinking about withdrawing his guilty plea.

Appellant failed to demonstrate that he was prejudiced because he failed to demonstrate that the district court would have granted the motion had trial counsel filed the motion earlier or included more information regarding the supposed conflict between appellant and trial counsel. Appellant failed to demonstrate that an actual conflict of interest existed or that the district court would have granted the motion to continue based on that conflict of interest. *See Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). The district court denied the motion to continue because a motion to continue had previously been granted and the victim would be greatly inconvenienced for a second time if the hearing was continued once again. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to interview or call witnesses at sentencing, recommend that family

and friends write letters to the district court, acquire a post-guilty-plea mental health evaluation, or argue in mitigation of his sentence. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant stipulated to two consecutive sentences of 10 years to life in prison. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for failing to inform the district court that it lacked jurisdiction over the third count that was dismissed pursuant to the guilty plea agreement because it occurred in Las Vegas rather than in Nye County. Appellant failed to demonstrate that he was prejudiced. As stated above, appellant stipulated to consecutive sentences and trial counsel was not allowed to argue for a reduced sentence. Further, appellant received a great benefit by pleading guilty. He was originally charged with three counts of sexual assault on a minor under the age of 14, which carries a sentence of 35 years to life in prison for each count. NRS 200.366(3)(c). By pleading guilty to two counts of sexual assault, his maximum sentence was 10 years to life for each count, NRS 200.366(2)(b), a significant reduction in the amount of time to serve. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to object to factual inaccuracies in the presentence report. Specifically, appellant claims that the presentence report states that he molested the victim 8 to 9 times in the car when the victim told the police it was only 5 or 6 times. Further, he claims the presentence report did not take into consideration that he had been molested as a child. Appellant

failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant stipulated to his sentences running consecutively, and appellant failed to demonstrate a reasonable probability of a different outcome at sentencing had trial counsel pointed out the discrepancy between the victim's statement and the information in the presentence report. Further, trial counsel informed the district court regarding appellant's own molestation as a child and provided the district court with appellant's psychological examination report that was done prior to appellant's guilty plea. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel was ineffective for failing to consult with appellant about filing an appeal and for informing appellant that there was not much to file an appeal about. Appellant failed to demonstrate that trial counsel was deficient. "[T]rial counsel does not have a constitutional duty to always inform his client of, or consult with his client about, the right to a direct appeal when the client has been convicted pursuant to a guilty plea." *Toston v. State*, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 799 (2011). The duty only arises "when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal." *Id.* Appellant was informed of his limited right to appeal in the guilty plea agreement, and trial counsel sent appellant a letter dated the same day as the sentencing hearing informing appellant about filing a notice of appeal and a reminder of the applicable deadline. Appellant does not claim that he asked trial counsel to file an appeal and trial counsel refused. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that the cumulative errors by trial counsel entitled him to relief. Appellant failed to demonstrate any alleged errors by trial counsel, singly or cumulatively, would have had a reasonable probability of altering his decision to plead guilty or the outcome of the sentencing hearing. Therefore, we

ORDER the judgment of the district court AFFIRMED.

*Pickering*, C.J.  
Pickering

*Hardesty*, J.  
Hardesty

*Cherry*, J.  
Cherry

cc: Hon. Kimberly A. Wanker, District Judge  
Ryan G. Carter  
Nye County District Attorney  
Attorney General/Carson City  
Nye County Clerk