

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON THOMPSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64025

FILED

MAR 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
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 Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In his March 27, 2013, petition, appellant claimed that his counsel was ineffective. To prove ineffective assistance of 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, 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 regarding the decision to enter a guilty plea, a petitioner must demonstrate a reasonable probability that,

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

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*, 466 U.S. at 697.

First, appellant claimed that his counsel was ineffective for failing to inform him he was entitled to submit a statement informing the grand jury that there had already been a preliminary hearing concerning this matter and that the evidence submitted at the preliminary hearing was considered insufficient. Appellant failed to demonstrate that he was prejudiced. Appellant failed to demonstrate a reasonable probability of a different outcome had counsel sought to inform the grand jury that the charges had previously been dismissed as the State presented sufficient evidence to support the grand jury's probable cause finding. See *Sheriff, Washoe Cnty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). In addition, appellant failed to demonstrate prejudice related to this claim because there was substantial evidence of his guilt, as appellant confessed to committing the crime. See *United States v. Mechanik*, 475 U.S. 66, 70 (1986); *Lisle v. State*, 113 Nev. 540, 551-52, 937 P.2d 473, 480 (1997). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to argue that the State violated NRS 172.145(2), as it failed to inform the grand jury that the charges had previously been dismissed. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. NRS 172.145(2) requires the State to submit to the grand jury "any evidence which will explain away the charge." However, a court's decision to dismiss a charge following a

preliminary hearing was not evidence regarding that charge, *Sheriff, Clark Cnty. v. Harrington*, 108 Nev. 869, 871, 840 P.2d 588, 589 (1992), and therefore, NRS 172.145(2) did not require the State to disclose the previous dismissal to the grand jury in this matter. Appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel argued the State was required to disclose the previous dismissal to the grand jury. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to argue that this case should not have been reassigned to the judge that had previously dismissed the charges. Appellant failed to demonstrate deficiency or prejudice for this claim because he did not identify any legal bases upon which his counsel could have challenged the assignment of this case to a particular district court judge. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel failed to inform appellant of his right to an appeal. Appellant failed to demonstrate that he was improperly deprived of a direct appeal. The duty to inform or consult with a client with respect to appealing a judgment of conviction based on a guilty plea 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." *Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 799 (2011). Appellant did not claim that he asked counsel to file an appeal and that counsel failed to do so, or that there were any circumstances where appellant would have benefitted from receiving advice regarding an appeal. Further, appellant was informed of

the limited right to appeal in the guilty plea agreement. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that the district court lacked jurisdiction to convict him and that his counsel failed to send him the entire case file. These claims were not based on an allegation that appellant's plea was involuntarily or unknowingly entered or that his plea was entered without effective assistance of counsel, and therefore, were not permissible in a post-conviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying these claims.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. David B. Barker, District Judge
Brandon Thompson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk