

IN THE SUPREME COURT OF THE STATE OF NEVADA

GETIYE ASCHALEW DUBALE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64071

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; Jessie Elizabeth Walsh, Judge.

In appellant's petition filed on June 13, 2013, appellant raised multiple claims of 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, petitioner would not have

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).

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 his counsel was ineffective for failing to investigate his psychotic disorder. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. To the extent appellant claimed his disorder made him incompetent, he failed to demonstrate that he did not have the ability to consult with his attorney with a reasonable degree of rational understanding and that he did not have a rational and factual understanding of the proceedings against him. See *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402 (1960)). To the extent appellant claimed that his counsel should have argued he was legally insane, appellant did not demonstrate that he was in a delusional state during the crime such that he could not know or understand the nature and capacity of his acts or could not appreciate the wrongfulness of his acts. See *Finger v. State*, 117 Nev. 548, 576, 27 P.3d 66, 84-85 (2001). Therefore, appellant failed to demonstrate he was entitled to relief.

Second, appellant claimed that his counsel was ineffective for failing to argue that the State failed to disclose exculpatory evidence. Appellant failed to demonstrate either deficiency or prejudice for this claim as he did not identify any evidence that was withheld by the State

that had exculpatory value. A bare claim, such as this one, is insufficient to demonstrate that a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, appellant failed to demonstrate he was entitled to relief.

Third, appellant claimed that his counsel was ineffective for failing to ensure that appellant understood the charges against him or that the district court explained the charges to appellant. Appellant failed to demonstrate deficiency or prejudice for this claim. The guilty plea agreement, which appellant indicated he read and understood, explained the charge of attempt theft. Appellant failed to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on going to trial had counsel explained this charge in greater detail. Therefore, appellant failed to demonstrate he was entitled to relief.

Fourth, appellant claimed that his counsel was ineffective because he spoke a different language than counsel and counsel failed to obtain the services of an interpreter. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record reveals that appellant addressed the justice court in English, indicated that he understood the justice court's statements which were relayed to him in English, and gave no indications that he had difficulty understanding English. Appellant also addressed the district court at length in English during the sentencing hearing. In addition, appellant also drafted and filed multiple proper person documents in this case, and all of those documents were drafted in English. Under these

circumstances, appellant failed to demonstrate that there was a language barrier between him and his counsel. Appellant failed to demonstrate a reasonable probability that he would have refused to plead guilty and would have insisted on going to trial had counsel sought the services of an interpreter. We note that appellant received a substantial bargain as the State reduced one charge and dismissed three other charges in exchange for appellant's guilty plea. Therefore, appellant failed to demonstrate he was entitled to relief.

Next, appellant claimed that his appellate counsel was ineffective. To prove ineffective assistance of appellate 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 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 must be shown. *Strickland*, 466 U.S. at 697. Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

First, appellant claimed that his appellate counsel was ineffective for failing to argue that the district court coerced his plea and improperly involved itself in the plea negotiations, as the district court discussed the restitution payment plan at the plea canvass hearing. Appellant failed to demonstrate that his appellate counsel's performance

was deficient or that he was prejudiced. Appellant and the State announced in the justice court that they had reached a plea deal. Accordingly, appellant cannot demonstrate that the district court improperly coerced his guilty plea by discussing the restitution payment plan at the plea canvass hearing. *See Cripps v. State*, 122 Nev. 764, 771 n.24, 137 P.3d 1187, 1191 n.24 (2006) (stating that the district court should not be involved in the plea negotiation process, but that that rule does not extend “to the court’s conduct of the plea canvass after a plea agreement has been reached by the parties”). Appellant failed to demonstrate a reasonable likelihood of success had counsel raised the underlying claim on direct appeal. Therefore, appellant failed to demonstrate he was entitled to relief.

Second, appellant claimed that his appellate counsel was ineffective for failing to raise claims that appellant wanted, raising only a frivolous claim regarding his sentence, and failing to obtain a complete set of transcripts of the district court proceedings. Appellant failed to demonstrate deficiency or prejudice for these claims. Appellant did not demonstrate that any additional claims not raised on appeal would have been raised by objectively reasonable counsel or that the claims had a reasonable likelihood of success on direct appeal. Appellant also failed to demonstrate a reasonable likelihood of success on appeal had counsel

obtained transcripts of additional hearings. Therefore, appellant failed to demonstrate he was entitled to relief.²

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.³

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

²The district court denied the petition pursuant to an application of the equitable doctrine of laches as discussed in *Hart v. State*, 116 Nev. 558, 563-64, 1 P.3d 969, 972 (2000). However, the equitable doctrine of laches as announced in *Hart* applies to motions to withdraw a guilty plea, not to post-conviction petitions for a writ of habeas corpus. As discussed previously, appellant failed to demonstrate that any of his claims had merit, and therefore, the district court reached the correct result in denying the petition. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

³We 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.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Getiye Aschalew Dubale
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk