

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY POSEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66507

**FILED**

**MAR 11 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from orders of the district court denying a post-conviction petition for a writ of habeas corpus, a motion for recusal, and a motion for transcripts at State expense.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition, filed on May 15, 2014, appellant raised several claims of 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.

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

*Strickland v. Washington*, 466 U.S. 668, 697 (1984). Claims must be more than bare claims "unsupported by any specific factual allegations that would, if true, have entitled [petitioner] to" relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

First, appellant claimed counsel was ineffective for failing to adequately communicate with him at the beginning of the case, object when the State openly denigrated appellant in court, and fully address the numerous errors in the presentence investigation report (PSI). Appellant's bare claims failed to demonstrate deficiency or prejudice. Appellant did not indicate what was inadequately communicated, when or how the State denigrated him, what the PSI errors were, or how any of the alleged deficiencies affected the outcome of the proceedings. We therefore conclude that the district court did not err in denying these claims.

Second, appellant claimed counsel was ineffective for admitting that she did not have sufficient knowledge of insanity defenses and asking for the appointment of co-counsel. Appellant failed to demonstrate deficiency or prejudice. Where counsel is not well-versed in a particular area of law, it is not objectively unreasonable to seek co-counsel who is. Further, in light of the appointment of co-counsel who was familiar with insanity defenses, appellant failed to demonstrate a reasonable probability that, but for counsel's actions, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective for failing to object to the untimely notice of grand jury proceedings. Appellant failed to demonstrate prejudice. He did not state what the ultimate result of the objection would have been and thus did not demonstrate a reasonable

probability that, had counsel objected to the untimely notice, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

Fourth, appellant claimed counsel was ineffective for failing to object to false testimony. Appellant failed to demonstrate deficiency or prejudice. There was no basis for counsel to object to the grand jury testimony, and as appellant was aware of the allegedly false testimony, he failed to demonstrate a reasonable probability that, but for counsel's inaction, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

Fifth, appellant claimed counsel was ineffective for failing to object to a breach of the guilty plea agreement, which appellant claimed was for a sentence of 2 to 20 years for each count. Appellant failed to demonstrate deficiency or prejudice. Appellant's claim was belied by the record. The State retained the full right to argue for what it felt was an appropriate sentence and therefore did not breach the plea agreement. The written agreement, which appellant acknowledged reading and understanding, specified that for each count, "the Court must sentence me to imprisonment...for a minimum term of not less than two (2) years and a maximum term of not more than twenty (20) years." Appellant conceded that "of not more than twenty" meant that the court could have sentenced him to less than the full maximum term. He thus must have also understood that "of not less than two" meant that the court could have sentenced him to more than the bare minimum term. We therefore conclude that the district court did not err in denying this claim.

Sixth, appellant claimed counsel was ineffective for allowing his "not guilty by reason of temporary insanity" plea to be changed to "not guilty" without his knowledge. Appellant failed to demonstrate prejudice, because he was ultimately permitted to plead not guilty by reason of insanity and proceeded on that defense theory. We therefore conclude that the district court did not err in denying this claim.

Appellant next claimed that he received ineffective assistance of appellate counsel. 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 had 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.

First, appellant claimed counsel was ineffective for filing the notice of appeal without informing appellant of it. Appellant failed to demonstrate deficiency or prejudice. He failed to demonstrate that counsel was objectively unreasonable in not telling him that the appeal had been filed, and he failed to demonstrate a reasonable probability of success on appeal had counsel informed him. We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed counsel was ineffective for raising an incomplete claim that appellant was subjected to cruel and unusual punishment. Appellant's bare claim failed to demonstrate deficiency or prejudice. Appellant did not state what additional argument or claims counsel should have raised. We therefore conclude that the district court did not err in denying this claim.

Appellant next claimed that his guilty plea was invalid. A guilty plea is presumptively valid, and appellant carried the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

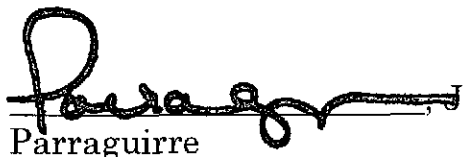
Appellant claimed that the district court was biased and coerced him into accepting the guilty plea because it ignored facts regarding a possible defense, said that temporary insanity was not a defense, and sought to convince appellant that any avenues he thought were available to him were not. Appellant failed to demonstrate that his guilty plea was invalid. Appellant acknowledged both orally and in writing that his plea was not coerced, and he acknowledged in writing that he had discussed possible defenses with counsel. Further, appellant did not state any facts that would demonstrate judicial bias. Facts specific to a trial defense are discussed with counsel, not the court, and appellant did not identify what other "avenues" he felt were available to him. Finally, his claim that the district court said that temporary insanity was not a defense was belied by the record. We therefore conclude that the district court did not err in denying this claim.

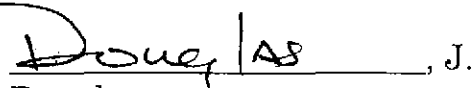
Appellant next claimed that he was denied his rights to full and fair hearings, be free from arbitrary decisions, be present at critical stages of the proceedings, not be convicted by the use of false testimony, present evidence, equal protection of the laws and due process, freedom of expression, seek redress from the courts, and confront witnesses against

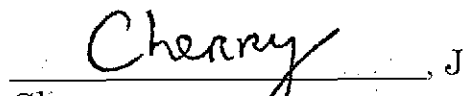
him. He also claimed that he was subjected to double jeopardy, his sentence was the product of judicial bias, and the district court exceeded its jurisdiction.<sup>2</sup> These claims were outside the scope permissible in a post-conviction habeas petition challenging a judgment of conviction based on a guilty plea, because the claims did not challenge the voluntariness of the guilty plea or the effective assistance of counsel. *See* NRS 34.810(1)(a). We therefore conclude that the district court did not err in denying these claims.

Finally, we conclude that the district court did not abuse its discretion in denying appellant's motions for recusal and for transcripts at the State's expense. Accordingly, we

ORDER the judgments of the district court AFFIRMED.

  
Parraguirre

  
Douglas

  
Cherry

cc: Hon. Douglas W. Herndon, District Judge  
Anthony Posey  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Appellant's claims that the district court lacked subject matter jurisdiction, exceeded its jurisdiction in denying a motion to dismiss counsel, and said that temporary insanity is not a defense did not implicate the jurisdiction of the court. *See* Nev. Const. art. 6, § 6; NRS 171.010.