

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID A. JOYCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36199

FILED

APR 11 2002

JANE ITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petitions for writs of habeas corpus.

On July 30, 1998, appellant David A. Joyce was convicted, pursuant to an Alford guilty plea,¹ of one count of attempted robbery with the use of a deadly weapon. Prior to the imposition of sentence, Joyce filed a proper person motion to withdraw his guilty plea, arguing, among other things, that he did not have sufficient time to review the formal written plea agreement. The State opposed the motion, and after hearing arguments from counsel, the district court denied the motion. The district court then sentenced Joyce to serve two consecutive prison terms of 18-72

¹North Carolina v. Alford, 400 U.S. 25 (1970).

months.² Joyce's direct appeal from his judgment of conviction was dismissed by this court.³

On October 27, 1999, Joyce filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 29, 2000, Joyce filed an amended proper person petition for a writ of habeas corpus. The State opposed the amended petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Joyce or conduct an evidentiary hearing. On May 3, 2000, the district court orally denied the claims raised in Joyce's first petition; and, on May 18, 2000, the district court orally denied the claims raised in Joyce's amended petition. The district court subsequently filed two written orders denying Joyce's petitions on June 27, 2000. This appeal followed.

In his petitions, Joyce raised numerous issues, most of which were previously raised in his various motions, petitions, and appeals. Joyce contended that: (1) the State was barred by NRS 178.562(1) from seeking a grand jury indictment after deciding not to proceed with the preliminary hearing; (2) the State's declaration that it was not going forward with the preliminary hearing exhibited a conscious indifference to rules of procedure; (3) insufficient evidence was presented to the grand jury supporting the deadly weapon enhancement; (4) the State pursued

²Prior to the entry of his guilty plea and the filing of the judgment of conviction, Joyce had also filed a pretrial petition for a writ of habeas corpus, and a motion to dismiss, both of which were denied by the district court.

³See Joyce v. State, Docket No. 32880 (Order Dismissing Appeal, May 3, 1999).

both a preliminary hearing and a grand jury indictment in violation of his right to be protected from double jeopardy; (5) the district court erred by denying his motion to withdraw his guilty plea because it was not entered knowingly and voluntarily; (6) he received ineffective assistance of counsel; (7) he was not timely served with a Marcum notice⁴ or served with an indictment; (8) the district court did not have jurisdiction over his case after the initial complaint was dismissed by the justice court; (9) the indictment was invalid because all of the grand jurors were not present when the foreman forwarded the indictment to the clerk; and (10) the prosecutor committed misconduct by failing to conduct a physical line-up and by proceeding with an indictment.

This court previously considered and rejected arguments (1)-(3) above when resolving Joyce's direct appeal. Therefore, the doctrine of the law of the case prevents further relitigation of these issues.⁵

Joyce's argument (5) above regarding the district court's denial of his presentence motion to withdraw his guilty plea, on the other hand, should have been raised on direct appeal. An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the

⁴Sheriff v. Marcum, 105 Nev. 824, 783 P.2d 1389 (1989).

⁵See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975); see also Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975) (holding that entry of a guilty plea waives any right to appeal regarding events that occurred prior to the entry of the plea).

proceedings.⁶ Therefore, we conclude that Joyce waived this issue by failing to pursue it on direct appeal. Further, the issues raised by Joyce in arguments (4), (7)-(10) above involved events occurring prior to the entry of his guilty plea, and therefore, were waived and not reviewable on appeal.⁷

Finally, Joyce contended that he received ineffective assistance of counsel, argument (6) above. More specifically, Joyce argued that he was forced into pleading guilty because of his counsel's ineffectiveness, and that counsel was ineffective by presenting him with the written plea agreement only moments before he was required to enter his plea. Joyce also stated that his counsel was intent on securing both his conviction and subsequent employment in the district attorney's office.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that but for counsel's deficient performance, the outcome of the proceedings would have been different.⁸ A district court's factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.⁹

⁶NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984); see also Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000).

⁷See Webb, 91 Nev. 469, 538 P.2d 164.

⁸Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).


⁹Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

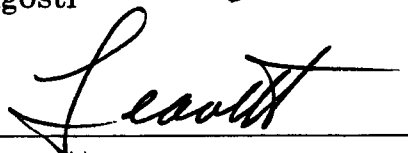
Our review of the record on appeal reveals that the district court did not err in denying Joyce's claim of ineffective assistance of counsel. The district court's factual findings are supported by the record and are not clearly wrong. Moreover, Joyce's claims of ineffective assistance of counsel consist of unsupported allegations and are belied by the record.¹⁰ Finally, the issues raised in Joyce's habeas petitions pertaining to the ineffectiveness of his counsel were previously raised, considered, and rejected by the district court in his presentence motion to withdraw his guilty plea.

Therefore, having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

¹⁰See Hargrove, 100 Nev. 498, 686 P.2d 222.

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
David A. Joyce
Clark County Clerk