

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAURICE DANIEL TALLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68238

FILED

DEC 18 2015

T. SCIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his December 12, 2014, petition and supplements, appellant Maurice Daniel Talley claimed his counsel was ineffective. 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, 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 v. Washington*, 466 U.S. 668, 697 (1984).

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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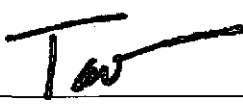
First, Talley claimed his counsel was ineffective for failing to investigate witnesses or evidence. In support of this claim, Talley asserted surveillance video demonstrates he was at his mother's home during the night of the incident. Talley failed to demonstrate his counsel's performance was deficient or resulting prejudice. In the guilty plea agreement, Talley asserted he had discussed possible defenses with his attorney, but that he believed a guilty plea was in his own best interests. In addition, at the plea canvass, Talley acknowledged he was the person who had fired gunshots at a home and that he knew there were persons inside the home. Further, there was strong evidence of Talley's guilt, as he had previously threatened to harm persons who resided at the home, a witness viewed Talley shooting at the residence, and another witness viewed Talley's vehicle during the incident. We further note Talley did not demonstrate the surveillance video actually demonstrated he was at his mother's home during the incident, and therefore, failed to prove the factual allegations underlying his claim. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 32 (2004). Under these circumstances, Talley failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on trial had counsel further investigated this matter. Therefore, the district court did not err in denying this claim.


Second, Talley claimed his counsel failed to consult with him regarding the strengths of the State's case against him or about possible defenses. Talley failed to demonstrate his counsel's performance was deficient or resulting prejudice. This claim is belied by the record because

in the guilty plea agreement, Talley acknowledged he had discussed the case with his counsel and had discussed possible defenses. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). In addition, at the plea canvass, Talley again stated he had discussed the charges, the rights he waived by entering a guilty plea, and that counsel had answered all of his questions. Talley failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel had further discussions with Talley regarding these matters. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We have reviewed all documents Talley has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Talley has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.

cc: Hon. Valerie Adair, District Judge
Maurice Daniel Talley
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk