

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEE MICHAEL SCHULTZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70318

**FILED**

OCT 19 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Appellant Lee Michael Schultz argues the district court erred in denying his claims of ineffective assistance of counsel raised in his March 3, 2015, petition and later supplemental petitions. 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*,

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

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, Schultz argues his counsel was ineffective for coercing him into signing the written plea agreement and permitting him to enter his *Alford*<sup>2</sup> plea while he was disorientated and frustrated. Schultz fails to demonstrate his counsel's performance was deficient or resulting prejudice. At the plea canvass, Schultz acknowledged that no one had forced him or coerced him into entering his plea. At the plea canvass, Schultz further acknowledged he signed the written plea agreement and he read and understood the rights he waived by entry of his plea, and Schultz gave no indication that he had been forced to sign the written plea agreement. In addition, Schultz acknowledged to the district court that he made the determination it was in his own best interests to accept the plea bargain and enter his *Alford* plea. Under these circumstances, Schultz fails to demonstrate his counsel's performance was objectively unreasonable or a reasonable probability of a different outcome had counsel performed different actions with respect to the plea agreement. Therefore, the district court did not err in denying this claim.

Second, Schultz argues his counsel was ineffective for failing to inform him of defense strategies. Schultz fails to demonstrate his counsel's performance was deficient or resulting prejudice. Schultz's claim

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<sup>2</sup>*North Carolina v. Alford*, 400 U.S. 25 (1970).

is belied by the record because in the written plea agreement, Schultz acknowledged that he discussed possible defenses and defense strategies with his counsel. At the plea canvass, Schultz acknowledged he discussed this matter with his counsel and she answered all of his questions. Accordingly, Schultz cannot demonstrate his counsel's performance was objectively unreasonable or a reasonable probability of a different outcome had counsel performed different actions with respect to informing him of defense strategies. Therefore, the district court did not err in denying this claim.

Third, Schultz argues his counsel was ineffective for failing to file a pretrial petition for a writ of habeas corpus. Schultz fails to demonstrate either deficiency or prejudice for this claim because he does not identify any bases upon which counsel should have pursued such a petition. A bare claim, such as this one, is insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 255 (1984). Therefore, the district court did not err in denying this claim.

Fourth, Schultz argues his counsel was ineffective for violating his right to a speedy trial by requesting a continuance due to her heavy caseload. Schultz fails to demonstrate his counsel's performance was deficient or resulting prejudice. Counsel advised the district court she needed additional time to prepare due to her heavy caseload, and the district court granted her motion for a continuance of the trial date. Schultz fails to demonstrate this was the action of an objectively unreasonable counsel. Schultz also fails to demonstrate that the proceedings were unreasonably delayed or any resulting prejudice

stemming from the delay. *See Furbay v. State*, 116 Nev. 481, 484-85, 998 P.2d 553, 555 (2000). Therefore, the district court did not err in denying this claim.

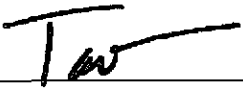
Next, Schultz argues he should be permitted to withdraw his guilty plea because he was coerced into pleading guilty. Schultz fails to demonstrate withdrawal of his plea was necessary to correct a manifest injustice. *See* NRS 176.165. As stated previously, Schultz acknowledged at the plea canvass that no one had forced him or coerced him into entering his plea. Therefore, the district court did not err in denying this claim.

Next, Schultz argues the district court erred in upholding the charges, appointing counsel who claimed that due to an immense caseload she would not be able to conduct trial in a timely fashion, violating jurisdictional guidelines by detaining a Michigan resident, permitting the minor victim to perpetuate a story which was her attempt to gain attention and academic leniency, detaining him without reasonable bail, detaining him despite a lack of probable cause, improperly imposing restrictions normally reserved for top tier sexual offenders, and improperly labeling Schultz a sexual deviant. Schultz also argues his conviction violated the statute of limitations, the State violated his speedy trial rights, the victim did not correctly identify him, and the information contained false information. These claims were not based upon an allegation that Schultz's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, were not within the scope of Schultz's postconviction petition.

See NRS 34.810(1)(a). Therefore, the district court did not err in denying relief for these claims.

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

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Lee Michael Schultz  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk