

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SETH EDWARD TRZASKA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70101

FILED

DEC 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Seth Edward Trzaska appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Trzaska argues the district court erred in denying his claim of ineffective assistance of counsel raised in his October 7, 2015, petition. 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*,

¹This appeal has been submitted for decision without oral argument. See 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).

Trzaska argued his counsel was ineffective for informing him that his conviction would be treated as a gross misdemeanor, rather than a felony.² Trzaska failed to demonstrate his counsel's performance was deficient or resulting prejudice.

In the written plea agreement, Trzaska agreed to plead guilty to attempted possession of stolen property and he acknowledged he understood the district court had the discretion to elect to sentence him to either a felony or gross misdemeanor for that offense. Trzaska further acknowledged he had discussed the plea agreement with his counsel and counsel had answered all of his questions regarding the agreement and its consequences to his satisfaction.

²Trzaska asserts this claim is supported by an on-the-record discussion held in the justice court, but that he has been denied the ability to present the transcript of this hearing to the district court. A review of the record reveals an audio recording of the justice court hearing was filed in the district court during a hearing on June 11, 2014. We also note Trzaska raised the underlying claim in a presentence motion to withdraw his guilty plea, the district court considered evidence pertaining to the justice court hearing, and the district court denied Trzaska's motion. Accordingly, any assertion Trzaska has been denied the opportunity to present evidence regarding the justice court hearing is belied by the record.


In addition, at the plea canvass, the district court explained to Trzaska he could be sentenced to either a felony or a gross misdemeanor and Trzaska informed the district court he understood. The district court also explained the penalties Trzaska faced with either a felony or a gross misdemeanor and Trzaska again informed the district court he understood. The district court further asked Trzaska if he had read and understood the written plea agreement, and Trzaska acknowledged he had done so. The district court also inquired whether his attorney had answered all of his questions pertaining to the agreement and Trzaska responded in the affirmative.

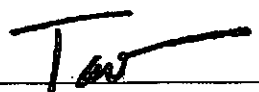
Accordingly, Trzaska failed to demonstrate his counsel did not properly explain he could be sentenced for either a gross misdemeanor or a felony. Trzaska failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel spent further time explaining the district court's authority to sentence him. Therefore, the district court did not err in denying this claim.

Next, Trzaska argues the district court erred in denying his motion seeking to enforce the order granting the production of documents and asserts his former counsel and the State have violated his civil rights for failing to provide him the evidence that was the subject of that motion. No statute or court rule permits an appeal denying a "motion for order of motion granted in part with respect to defendant request for production of documents papers pleadings and tangible property with exception of the presentence investigation report" and, therefore, we lack jurisdiction to

consider this claim. *See Castillo v. State*, 106 Nev. 349, 352-53, 792 P.2d 1133, 1135 (1990) (explaining the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Susan Johnson, District Judge
Seth Edward Trzaska
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk