

IN THE SUPREME COURT OF THE STATE OF NEVADA

PLAS B. BOOKER A/K/A PLAZ  
BERNARD BOOKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36681

**FILED**

DEC 05 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On June 7, 1999, the district court convicted appellant Plas B. Booker, pursuant to a guilty plea, of second-degree murder. The district court sentenced Booker to serve a term of life in prison with the possibility of parole after 10 years. Booker did not file an appeal.

On June 6, 2000, Booker filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Booker or to conduct an evidentiary hearing. On August 16, 2000, the district court denied the petition. This appeal followed.

In his petition, Booker alleged that trial counsel provided ineffective assistance by (1) failing to interview witnesses who would have corroborated Booker's claim of self-defense, and (2) failing to "protect" the conditions of the plea agreement. We conclude that these contentions lack merit.

01-20347

Claims of ineffective assistance of counsel are analyzed under the two-part test set forth in Strickland v. Washington.<sup>1</sup> To state a claim of ineffective assistance sufficient to challenge a judgment of conviction based on a guilty plea, the petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, the petitioner would not have pleaded guilty.<sup>2</sup> The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.<sup>3</sup> Our review of the record reveals that Booker is not entitled to relief on his ineffective assistance claims.

First, Booker did not allege that he pleaded guilty as a result of counsel's alleged failure to interview potential defense witnesses. Booker accepted the plea negotiations on February 3, 1999, just two weeks after the State amended the criminal complaint to charge him with first-degree murder with the use of a deadly weapon. This left little time or reason for counsel to conduct an extensive investigation. It further appears that the defense had considered the possibility of a self-defense claim because the plea negotiations were conditional, with Booker reserving the right to withdraw from the negotiations if tests on a weapon found at the scene of the crime were positive for his blood. After the tests came back inconclusive, Booker was arraigned in district court and entered his guilty plea. The record indicates that Booker pleaded guilty because the State had a strong case and he wished to avoid a conviction for first-degree murder, a deadly weapon enhancement, and the possibility of a death sentence.<sup>4</sup> Because Booker has not alleged, and the record repels any claim, that he pleaded guilty because counsel failed to

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<sup>1</sup>466 U.S. 668 (1984); accord Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>2</sup>Hill v. Lockhart, 474 U.S. 52 (1985).

<sup>3</sup>Strickland, 466 U.S. at 697.

<sup>4</sup>Shortly before Booker accepted the plea negotiations and conditionally waived his right to a preliminary hearing, the State filed a notice indicating its intent to reserve its right to seek the death penalty.

interview potential defense witnesses, he failed to demonstrate prejudice sufficient to invalidate the judgment of conviction. We therefore conclude that the district court did not err in rejecting this claim of ineffective assistance.

Second, the record reveals that trial counsel accurately represented the plea negotiations, in which Booker stipulated to a sentence of life in prison with the possibility of parole after 10 years. Because the record repels Booker's claim that trial counsel failed to "protect" the conditions of the plea agreement, we conclude that the district court did not err in rejecting this claim of ineffective assistance.

Booker also alleged that counsel deprived him of his right to a direct appeal by failing to file a notice of appeal.<sup>5</sup> Booker, however, did not allege that he asked counsel to file an appeal and that counsel failed to do so. We have held that the defendant has the burden to indicate to counsel that he wishes to file an appeal and that counsel "is not obliged to obtain consent not to file the appeal where the client does not express a desire to challenge the proceedings."<sup>6</sup> Because Booker failed to make the necessary allegations to demonstrate that he was deprived of his right to appeal due to ineffective assistance of counsel, we conclude that the district court did not err in rejecting that claim.

Finally, Booker claimed that the district court lacked jurisdiction to convict him of second-degree murder because he was only formally charged with attempted murder with the use of a deadly weapon. This claim is belied by the record. The State amended the criminal complaint to charge Booker with first-degree murder with the use of a deadly weapon. Moreover, after Booker agreed to plead guilty to second-

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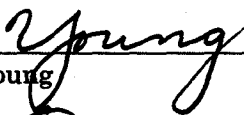
<sup>5</sup>The district court analyzed this claim, in part, as a claim that counsel failed to advise Booker of his right to a direct appeal. Booker, however, did not allege that he was not advised of that right. Moreover, the record clearly belies any such claim as the written guilty plea agreement advised Booker of his limited right to appeal a judgment of conviction based on a guilty plea. See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999).


<sup>6</sup>Id. at 20, 974 P.2d at 660.


degree murder and waived his right to a preliminary hearing, the justice court bound him over to district court on that charge and the State filed an information in district court charging Booker with second-degree murder. Accordingly, we conclude that the district court had jurisdiction over the murder charge.

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.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Kathy A. Hardcastle, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Plas B. Booker  
Clark County Clerk

<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).