

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES B. SCOTT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36812

FILED

APR 20 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

JAMES B. SCOTT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36813

JAMES B. SCOTT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36827

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated

¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

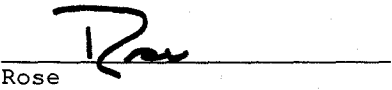
01-06742

that the district court erred as a matter of law. Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Rose

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

ORIGINAL

Code 3060

FILED

SEP 12 2000

AMY HARVEY, CLERK
By: *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAMES B. SCOTT

Petitioner,

Case Nos CR99P1695
CR99P1677A
CR99P1678A

v.

WARDEN MILLIGAN,

Dept. No. 9

Respondent.

ORDER GRANTING MOTION TO DISMISS PETITION

On May 31, 2000, Respondent Warden Milligan filed a MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (Post-Conviction). On June 7, 2000, Petitioner, James B. Scott filed an ANSWER TO STATE'S RETURN. On June 9, 2000, Respondent filed a REPLY TO PETITIONER'S ANSWER. On June 13, 2000, Petitioner submitted a MOTION TO STRIKE STATE'S REPLY (it was filed on June 20, 2000). On June 19, 2000, Respondent filed an OPPOSITION TO MOTION TO STRIKE STATE'S REPLY¹. On June 29, 2000, Petitioner filed an OPPOSITION TO STATE'S MOTION TO DISMISS.

The Court, having reviewed the above papers and the entire file, finds and concludes as follows:

¹Pursuant to NRCP 7 and Rule 12(4) of the Second Judicial District Court Rules, the Court is denying Petitioner's Motion to Strike. See Also Elliot v. Resnick, 114 Nev. 25, 30, 952 P.2d 961 (1998).

1 In his first claim, Petitioner claims the court lacked jurisdiction because the criminal
2 complaints were not sworn to under oath before a magistrate or judge. This contention is not
3 supported by the record. The complaint is a written statement of the essential facts constituting the
4 public offense charged. It must be made upon: (1) Oath before magistrate or notary of public; or (2)
5 Declaration which is made subject to the penalty for perjury. NRS 171.102. On the face of each
6 complaint, the Deputy District Attorney declares under penalty for perjury that the Petitioner has
7 committed the recited crime.

8 Petitioner also asserts that he suffered ineffective assistance of counsel by (1) counsel's
9 failure to object to the defective complaints that were filed in the justice court; (2) counsel's failure
10 to inform defendant to object to the insufficiency of the plea agreement which he claims failed to
11 include his statutory right to appeal and (3) counsel's failure to inform petitioner of his statutory
12 right to withdraw his plea of guilt.

13 A post-conviction habeas corpus petition must be supported by specific factual allegations.
14 "Naked" or "bare" claims do not entitle an appellant to an evidentiary hearing. Hargrove v. State,
15 100 Nev. 498, 502, 686 P.2d 222 (1984). The defendant is not entitled to an evidentiary hearing if
16 the factual allegations are belied or repelled by the court. Id. at 503, 686 P.2d at 225. The
17 allegations in the petition do not contain any specific factual allegations and are belied by the record.

18 The Court has addressed Petitioner's alleged jurisdictional defect claim in the complaint. As
19 to the next two claims, the petition does not specify how the attorney failed to adequately represent
20 Petitioner by not advising him of his right to appeal. Petitioner was not prejudiced by his alleged
21 ignorance of the right to appeal, as he filed a Motion of Appeal on November 8, 1999. This motion
22 raised some of the same issues he has raised in his Petition. In an Order Dismissing Appeals on
23 March 30, 2000, our High Court held that Petitioner's contentions were without merit.

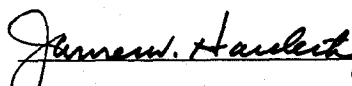
24 Petitioner also alleges that his counsel was ineffective for failing to inform him of his
25 statutory right to withdraw his plea. Petitioner further alleges his guilty plea was the result of an
26 involuntary plea. He bases this allegation on the fact that the State did not have sufficient evidence
27 to convict him. The rule requires the court to address the defendant personally to determine whether

1 his plea is voluntary and made with an understanding of the nature of the charge and the
2 consequences of the plea before accepting it. Lawrence J. Hefner v. Warden, Nevada State Prison,
3 85 Nev. 374, 376, 455 P.2d 625, 626 (1969). A “mere subjective belief of a defendant as to potential
4 sentence, or hope of leniency, unsupported by any promise from the State or indication by the court,
5 is insufficient to invalidate a guilty plea as involuntary or unknowing.” Rouse v. State, 91 Nev. 677,
6 679, 541 P.2d 643, 644 (1975). There is no statutory right to withdraw his guilty plea. However,
7 Petitioner did possess a statutory right to file a motion to withdraw his plea wherein he would be
8 required to allege specific factual allegations indicating the plea was involuntary. Petitioner failed to
9 exercise this right. Petitioner’s subjective belief that he may be able to enforce the plea negotiations
10 after entering a plea of guilty does not excuse his failure to file a motion to withdraw his plea. In the
11 plea canvass, the Court specifically states it is not bound by the plea negotiation between the state
12 and Petitioner. Therefore, Petitioner’s claims of ineffective assistance of counsel regarding his
13 statutory right to withdraw his plea and involuntary plea should be dismissed as it is not enough to
14 argue that the evidence is insufficient, especially if his allegations lack factual specificity.

15 The Court has concluded an evidentiary hearing is not necessary for the reasons expressed.
16 Pangallo v. State, 112 Nev. 1533, 1536, 930 P.2d 100, 102 (1996).

17 ACCORDINGLY, IT IS HEREBY ORDERED that the Motion to Dismiss is GRANTED
18 and James B. Scott’s Petitions for Writ of Habeas Corpus are DISMISSED.

19 DATED this 12 day of September, 2000.

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24 JAMES W. HARDESTY

25 DISTRICT JUDGE
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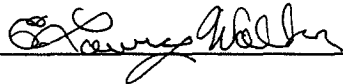
CERTIFICATE OF SERVICE

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Pursuant to NRCPC 5(b), I hereby certify that I deposited for mailing in the United States mail, postage prepaid, a true and correct copy of the attached document addressed to:

Joseph R. Plater, Esq.
Deputy District Attorney
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)

James B. Scott
NDOP #63335
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702-7000

By  Dated 9/12/00