

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK E. ALFORD, JR.,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
DONALD HELLING,
Respondent.

No. 37232

FILED

AUG 23 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Frederick E. Alford, Jr.'s post-conviction petition for a writ of habeas corpus.

On March 2, 1992, Alford was convicted, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced Alford to serve two consecutive prison terms of life without the possibility of parole. Alford filed a direct appeal. This court reversed Alford's conviction and remanded for a new trial.¹

On remand, the State charged Alford, by way of an amended information, with first-degree murder with the use of a deadly weapon, subornation of perjury, and home invasion. After the State's opening argument and first witness, Alford decided to enter a plea. On May 19, 1997, Alford was convicted, pursuant to a plea of nolo contendere, of first-degree murder, home invasion, and subornation of perjury. The district

¹Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995).

court sentenced Alford to serve a prison term of life with the possibility of parole for the murder count and two consecutive prison terms of 10 years for the home invasion and subornation of perjury counts. Alford filed a direct appeal. This court affirmed his conviction.²

On September 7, 2000, Alford filed a proper person post-conviction petition for a writ of habeas corpus alleging numerous instances of ineffective assistance of counsel. The State opposed the petition. Without appointing counsel or conducting an evidentiary hearing, the district court denied the petition. Alford filed the instant appeal with the assistance of counsel.

Alford contends that the district court erred in rejecting his numerous claims of ineffective assistance of counsel.³ In particular, Alford

²Alford v. State, Docket No. 30369 (Order Dismissing Appeal, June 9, 1999).

³Additionally, Alford contends that the district court erred in allowing the State to amend the information and in accepting Alford's nolo contendere plea without an adequate factual basis. We need not consider these contentions because Alford waived them by failing to raise them on direct appeal. See NRS 34.810; Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

We also reject Alford's contentions that appellate counsel was ineffective for failing to argue the district court erred in denying Alford's pretrial motions to strike the deadly weapon enhancement, to suppress the answering machine messages and to preclude the felony-murder argument. We conclude that appellate counsel had no reasonable likelihood of success on the merits of those issues because Alford waived his right to raise them on appeal in entering his plea of nolo contendere. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) ("An attorney's decision not to raise meritless issues on appeal is not ineffective
continued on next page . . .

claims that his trial counsel was ineffective in: (1) preparing Alford's presentence motion to withdraw; (2) failing to file a motion seeking the exclusion of letters to Alford's wife; (3) recommending that Alford plead nolo contendere and failing to raise the issue of the lack of a factual basis for the home invasion and subornation of perjury charges; (4) failing to secure a complete psychiatric evaluation for trial; (5) failing to adequately prepare Alford's motion in limine to preclude a felony-murder argument; and (6) failing to reasonably communicate with Alford or prepare for trial.

Because Alford pleaded nolo contendere, to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, Alford must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that, but for counsel's errors, Alford would have insisted on going to trial.⁴ 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.⁵ We conclude that Alford has not demonstrated that the district court's findings of fact are not supported by

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assistance of counsel.”); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (holding that, generally, defendant who enters a plea has no right to appeal events preceding it in the criminal process).

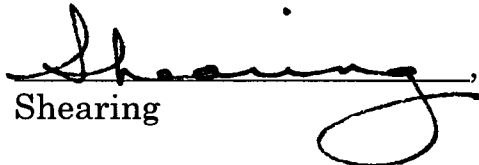
⁴See Kirksey, 112 Nev. at 99-98, 923 P.2d at 1107; see also Hill v. Lockhart, 474 U.S. 52 (1985).

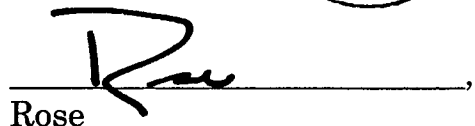
⁵See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

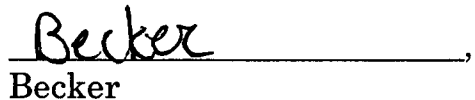
substantial evidence or are clearly wrong. Moreover, Alford has not demonstrated that the district court erred as a matter of law.⁶

Having considered Alford's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁶See id.