IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN D. HAGLER A/K/A COREY ALLEN HAGLER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 37240
WARREN D. HAGLER A/K/A COREY ALLEN HAGLER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 37642
WARREN D. HAGLER A/K/A COREY ALLEN HAGLER, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 37829

FILED

FEB 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket Nos. 37240 and 37642 are proper person appeals from orders of the district court denying appellant's post-conviction petitions for a writ of habeas corpus. Docket No. 37829 is a proper person appeal from an order of the district court denying a motion to withdraw a guilty plea. We elect to consolidate these appeals for disposition.[1]

On April 28, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of pandering, one count of pandering of a child, and two counts of living from the earnings of a

[1]See NRAP 3(b).

prostitute. The district court sentenced appellant to serve a minimum term of nineteen months to a maximum term of sixty months for pandering of a child and four additional concurrent terms of a minimum of twelve months to a maximum of thirty-four months for the remaining counts. This court dismissed appellant's direct appeal.[2] The remittitur issued on August 23, 2000.

Docket No. 37240

On October 10, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed several documents in support of his petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 20, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first raised two claims that trial counsel rendered ineffective assistance prior to entry of appellant's guilty plea. To state a claim of 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 fell below an objective standard of reasonableness. Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.[3]

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[2]Hagler v. State, Docket No. 35994 (Order Dismissing Appeal, July 28, 2000).

[3]See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

First, appellant argued that his trial counsel failed to contact the State's witnesses about differences in the testimony of the witnesses at the preliminary hearing and in the police reports. Appellant failed to support this claim with any specific facts that would entitle him to the relief requested.[4] Thus, we conclude that appellant failed to demonstrate his counsel was ineffective in this regard.

Second, appellant contended that his trial counsel was ineffective in failing to argue that Erin Riley needed to be present in court to waive the alleged conflict of interest. Appellant did not allege that he would not have pleaded guilty and would have insisted on going to trial in absence of this alleged error. Erin Riley, with the advice of independent counsel, signed a written waiver of any alleged conflict of interest. Thus, we conclude that appellant failed to demonstrate that he was prejudiced by counsel's performance in this regard.

Next, appellant argued that his trial counsel was ineffective at sentencing for arguing that the district court should follow the district attorney's sentencing recommendation rather than arguing in favor of appellant's proper person motion to withdraw a guilty plea. To state a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different.[5] The court need not consider both prongs of the Strickland test

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[4]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[5]See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

if the defendant makes an insufficient showing on either prong.[6] We conclude that appellant failed to demonstrate his trial counsel's performance was deficient in this regard. Appellant entered into a conditional plea. In exchange for his plea to two counts of pandering, one count of pandering of a child and two counts of living off of the earnings of a prostitute, the State agreed to dismiss the other charges against appellant and agreed to recommend that the sentences for all counts would run concurrently and that there would be a cap of nineteen months on the minimum end. If the district court sentenced appellant to serve a minimum term greater than nineteen months, appellant would be able to withdraw his plea of guilty. The district court accepted appellant's conditional plea. Appellant's proper person presentence motion to withdraw a guilty plea raised complaints unrelated to the terms of the conditional plea. Thus, appellant's trial counsel was not ineffective in arguing in favor of the sentence recommended in the plea agreement.

Next, appellant argued that his plea was involuntary because it was coerced by the district attorney and several public defenders. Appellant claimed that these attorneys informed him that he was going to lose at trial and that the district court was looking forward to finding him guilty and giving him life in prison. Appellant claimed that the district attorney implied that the district court would rule in favor of the State because the district attorney had known the judge for several years. Finally, appellant claimed that he was promised probation in exchange for his plea.

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[6]See Strickland, 466 U.S. at 697.

A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.[7] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[8]

Based upon our review of the record on appeal we conclude that the district court did not abuse its discretion in determining that appellant's guilty plea was voluntarily entered. During the plea canvass, the district court thoroughly examined appellant's understanding of the terms of the conditional plea agreement. Appellant affirmatively indicated that he understood he faced a minimum term of nineteen months in prison pursuant to the conditional plea agreement and that if the district court imposed a greater minimum sentence he would be able to withdraw his plea. Appellant represented that he was entering his guilty plea freely and voluntarily, and in fact, appellant requested that the district court follow the plea agreement. Appellant also acknowledged reading and discussing the written guilty plea agreement with his attorney. The signed written guilty plea agreement thoroughly explained the potential sentences he faced by entry of his plea and the constitutional rights he waived by entry of his plea. The written guilty plea agreement also stated that appellant had not been "promised or guaranteed any particular sentence by anyone" and that appellant was not "acting under duress or coercion or by virtue of any promises of leniency." Appellant's

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[7]See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[8]See Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

counsel certified that to the best of his knowledge the plea agreement was entered into voluntarily. Under the totality of the circumstances, appellant failed to demonstrate his plea was involuntarily entered.

Next, appellant raised nine claims of ineffective assistance of appellate counsel.[9] Appellant argued that his appellate counsel was ineffective for failing to argue the following: (1) a conflict of interest existed with the public defender's office representing him; (2) the district court's denial of his presentence motion to withdraw a guilty plea without first reviewing the entire record was in error; (3) the district court was biased and prejudiced against him; (4) appellant's due process rights were violated at the preliminary hearing when mention was made of his criminal record and he did not take the stand; (5) Erin Riley's testimony lacked corroboration to sustain a conviction for pandering; (6) no facts supported the State's theory that appellant was living off the earnings of a prostitute as to Erin Riley; (7) the justice court wrongfully bound appellant over for possession of a stolen vehicle when evidence did not support the charge; (8) the prosecutor committed misconduct and the district court erred in failing to give the defense adequate time to respond to a motion to consolidate; and (9) insufficient evidence existed to support a kidnapping conviction. "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set

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[9]To the extent that appellant also raised these claims independently of the ineffective assistance claims, we conclude that they were waived. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). We have reviewed the merits of the underlying claims only to the extent necessary to resolve the ineffective assistance claims. See Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

forth in Strickland v. Washington, 466 U.S. 668 (1984)."[10] Appellate counsel is not required to raise every non-frivolous issue on appeal.[11] This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.[12] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."[13] Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that he was prejudiced by appellate counsel's failure to raise these issues on appeal. Appellant failed to demonstrate that any of the above issues had a reasonable probability of success on appeal.

Accordingly, we affirm the order of the district court denying appellant's petition.

Docket No. 37642

On March 9, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.[14] The

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[10]Kirksey, 112 Nev. at 998, 923 P.2d at 1113.

[11]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[12]Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

[13]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

[14]Appellant labeled his petition a "motion to vacate judgment of conviction as being defective." Because appellant challenged the validity of his conviction, appellant's motion must be construed as a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of

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State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 12, 2001, the district court denied appellant's petition. This appeal followed.

Appellant's petition was successive because he had previously filed a post-conviction petition for a writ of habeas corpus challenging the validity of the judgment of conviction.[15] Thus, appellant's petition was procedurally barred absent a demonstration of good cause and prejudice.[16] Appellant did not attempt to demonstrate good cause for the procedural defect. Therefore, we affirm the order of the district court.

Docket No. 37829

On April 13, 2001, appellant filed a proper person motion to withdraw a guilty plea in the district court. The State opposed the motion. On April 30, 2001, the district court denied the motion. This appeal followed.

In his motion, appellant repeated his prior claims regarding the alleged conflict of interest and the denial of his presentence motion to withdraw a guilty plea. This court has rejected appellant's previous attempt to challenge the alleged conflict of interest and the denial of his presentence motion to withdraw a guilty plea in his appeal in Docket No. 37240. The doctrine of the law of the case prevents further relitigation of

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. . . *continued*
the conviction or sentence, and must be used exclusively in place of them.").

[15]See NRS 34.810(2).

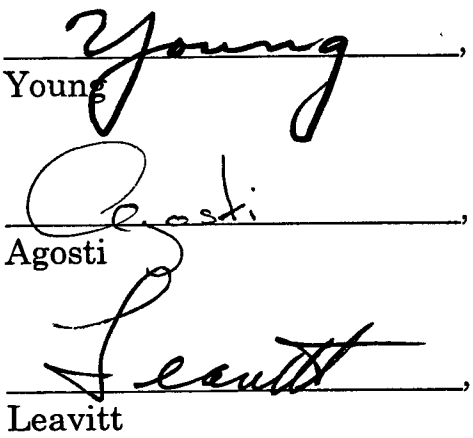
[16]See NRS 34.810(3).

these issues.[17] Therefore, appellant failed to demonstrate his plea was invalid. We affirm the order of the district court denying this motion.

Conclusion

Having reviewed the records 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.[18] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[19]



_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Warren D. Hagler
Clark County Clerk

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[17]See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

[18]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

[19]We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.