IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD LUCAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37861

FILED

JUN 27 2002

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

ORDER OF AFFIRMANCE

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

On August 13, 1998, the district court convicted appellant, pursuant to a guilty plea, of second degree murder with the use of a deadly weapon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years, plus an equal and consecutive term for the deadly weapon enhancement. This court dismissed appellant's direct appeal.[1]

On February 13, 2001, appellant 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 appellant or to

[1]Lucas v. State, Docket No. 32928 (Order Dismissing Appeal, May 10, 2000).

conduct an evidentiary hearing. On May 9, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his trial counsel rendered ineffective assistance. 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.[2]

First, appellant claimed that his trial counsel rendered ineffective assistance by failing to reveal the terms of the plea bargain. At the plea canvass, appellant's counsel explained the terms of the plea agreement in open court while appellant was present. The district court thoroughly canvassed appellant and reiterated the terms of the plea bargain to appellant. Appellant indicated to the court that he understood and had no questions about the guilty plea agreement or the negotiations. Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant claimed that his trial counsel rendered ineffective assistance by informing appellant that "the only sentence available under Nevada law was two ten to life sentences." At the plea

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

canvass, the district court properly informed appellant of the range of penalties he was facing, and appellant affirmed that he understood the range of penalties he could receive. Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Next, appellant raised several claims that his appellate counsel rendered ineffective assistance.[3] "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set forth in Strickland v. Washington, 466 U.S. 668 (1984)."[4] Appellate counsel is not required to raise every non-frivolous issue on appeal.[5] This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.[6] "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."[7]

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[3]To the extent that appellant raised any of the same issues underlying his claim that his appellate counsel was ineffective as independent constitutional violations, they are waived. 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 nevertheless address appellant's claims in connection with his contention that appellate counsel should have raised the claims on direct appeal.

[4]Kirksey, 112 Nev. at 998, 923 P.2d at 1113 (1996),

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

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

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

First, appellant contended that his appellate counsel rendered ineffective assistance by failing to raise the claim that eyewitness testimony in support of the affirmative defense of self-defense was "newly discovered" evidence. The evidentiary issue underlying this claim was substantially raised in appellant's direct appeal and rejected by this court. Thus, appellant's contention that his counsel failed to raise this issue on direct appeal is belied by the record, and the doctrine of the law of the case prevents further relitigation of this issue.[8] Appellant cannot avoid this doctrine "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."[9] Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant contended that his appellate counsel rendered ineffective assistance by failing to raise the claim that appellant was denied due process of law when the district court failed to allow appellant to withdraw his guilty plea. The issue of whether the district court erred by not allowing appellant to withdraw his guilty plea was substantially raised in appellant's direct appeal and rejected by this court. Thus, appellant's contention that his counsel failed to raise this issue on direct appeal is belied by the record, and the doctrine of the law of the case prevents further relitigation of this issue.[10] Therefore, we conclude that

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

[9]Id. at 316, 535 P.2d at 799.

[10]See id.

appellant failed to demonstrate that his counsel was ineffective in this regard.

Third, appellant contended that his appellate counsel rendered ineffective assistance by failing to raise the claim that Dr. Sheldon Green's testimony at the grand jury proceeding that the victim did not die from a contact gunshot wound directly contradicted the grand jury testimony of State witness Charles Taylor. We conclude that the district court did not err in dismissing appellant's claim. Appellant's claim that Dr. Green's testimony contradicted Charles Taylor's testimony is not supported by the record. Moreover, appellant pleaded guilty to second degree murder with the use of a deadly weapon. Thus, we conclude that appellant failed to demonstrate that he was prejudiced by appellate counsel's failure to raise this issue on direct appeal because appellant did not show that this issue had a reasonable probability of success on appeal.

Lastly, appellant contended that he was "deprived of his state and federal constitutional rights to due process of law, equal protection of the laws, the prohibition against cruel and unusual punishment, and a reliable sentence" by this court's "inadequate review of his conviction and sentence." Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. This claim fell outside the scope of claims permissible in a habeas corpus petition when the conviction is based upon a guilty plea.[11]

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[11]See NRS 34.810(1)(a) (limiting claims in a habeas corpus petition when the conviction is based upon a guilty plea to claims of ineffective assistance of counsel or claims challenging the validity of the plea).

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.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[13]

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Reginald Lucas
Clark County Clerk

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[12]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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