IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY C. TAYLOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37962

FILED

JUN 03 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 dismissing appellant's post-conviction petition for a writ of habeas corpus.

On March 11, 1999, the district court convicted appellant, pursuant to a guilty plea, of second degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. Appellant did not file a direct appeal.

On February 2, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel and counsel filed a supplemental petition. The State filed a motion to dismiss and a response to the supplemental petition. On April 11, 2001, the district court conducted an evidentiary hearing. On April 30, 2001, the district court dismissed appellant's petition. This appeal followed.

02-09612

In his petition, appellant first contended that his trial counsel rendered ineffective assistance.[1] To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, an appellant must demonstrate that his counsel's performance fell below an objective standard of reasonableness.[2] An appellant must also demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial.[3]

First, appellant claimed his counsel rendered ineffective assistance by failing to employ an expert witness to assist in the preparation of a defense. Specifically, appellant argued that his decision to plead guilty was based in part on the fact that the State had three experts to support the prosecution's theory of the case, while the defense had none. We conclude that this claim lacks merit. Appellant failed to demonstrate that counsel's conduct was unreasonable or that by

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[1]To the extent that appellant raised any of the issues underlying his ineffective assistance of counsel claims as independent constitutional violations, these issues could have been raised on direct appeal, and therefore, 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 to the extent that they are framed as ineffective assistance of counsel.

[2]See Strickland v. Washington, 466 U.S. 668 (1984).

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

employing an expert witness to assist in the preparation of a defense appellant would not have pleaded guilty and would have insisted on going to trial. At the evidentiary hearing, appellant's counsel testified that although he had secured funds to hire a forensic pathologist to assist in the preparation of a defense, after discussing with appellant all of the facts weighing heavily against him, including the fact that all of the State's experts had concluded that the infant victim's death was non-accidental, appellant decided to enter a guilty plea. Counsel reasoned that even with an expert witness, appellant would not have been acquitted at trial in light of the additional facts against him. At the time of the crime appellant was absent without leave from the military, was estranged from the mother of the victim, was under emotional stress, had been drinking alcohol, and did nothing of a remedial nature to get the victim immediate medical attention. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant claimed his counsel rendered ineffective assistance by failing to suppress incriminating statements made by appellant to law enforcement officers while he was allegedly under custodial interrogation. We conclude that this claim lacks merit. At the evidentiary hearing, appellant's counsel testified that he had filed multiple pretrial motions to restrict evidence, including a motion to suppress appellant's statements to law enforcement officers. Appellant entered his guilty plea before this motion could be heard and ruled on. Further, appellant's counsel affirmed that the motion had not affected the

plea negotiations. Additionally, appellant failed to demonstrate that the motion to suppress would have been meritorious and that there was a reasonable likelihood that the exclusion of appellant's incriminating statements would have changed the outcome of the proceedings.[4] Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Next, appellant contended that his plea was involuntarily and unknowingly entered because the prosecution committed misconduct by encouraging appellant's family and counsel to persuade appellant to accept a plea bargain. We conclude that this claim lacks merit and that the district court did not err in determining that appellant's plea was knowingly and voluntarily entered. Appellant failed to demonstrate that the prosecution committed misconduct. At the evidentiary hearing, appellant's trial counsel testified that he had told appellant that appellant had lost the support of his family because appellant's wife had been "very hostile" towards appellant during counsel's talks with her. Further, appellant's trial counsel testified that he had thoroughly explained to appellant all of the facts that weighed heavily against him, and earnestly believed that appellant's decision to enter a guilty plea was voluntarily made by appellant. Additionally, appellant was thoroughly canvassed, and affirmed that his plea was being made knowingly and voluntarily.

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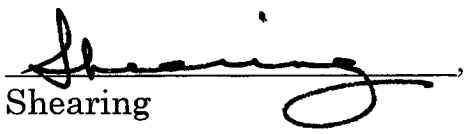
[4]See Kirksey, 112 Nev. at 990, 923 P. 2d at 1109.

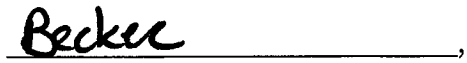
Thus, we conclude that appellant failed to demonstrate that his plea was not knowingly and voluntarily entered.

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[6]


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Archie E. Blake, District Judge
Attorney General/Carson City
Lyon County District Attorney
Timothy C. Taylor
Lyon County Clerk

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

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