

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND MARSEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38350

FILED

MAR 14 2002

ORDER OF AFFIRMANCE

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

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

On March 2, 1996, Marsee was convicted, pursuant to a guilty plea, of invasion of the home and burglary. The district court sentenced Marsee to serve two consecutive prison terms of 48 to 120 months. Marsee filed a direct appeal, and this court affirmed his conviction.<sup>1</sup>

On March 22, 1999, Marsee filed a proper person post-conviction petition for a writ of habeas corpus, claiming that his counsel was ineffective. The State filed its opposition to the petition on April 1, 1999. The district court appointed counsel. Thereafter, Marsee filed ten separate motions to extend time to file his supplemental petition, which were granted by the district court. On July 9, 2001, the date of the scheduled hearing on Marsee's petition, counsel for Marsee requested another extension of time to file his supplemental petition. On that same day, the State filed a motion to dismiss, arguing that it had been

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<sup>1</sup>Marsee v. State, Docket No. 28873 (Order Dismissing Appeal, March 28, 1998).

prejudiced by Marsee's delay in filing the supplemental petition. After hearing arguments from counsel, the district court dismissed the petition "pursuant to NRS 34.800." This appeal followed.

Marsee contends that the district court erroneously denied the petition on procedural grounds. We agree. NRS 34.800 provides that an untimely petition may be dismissed in instances where the State shows it was prejudiced by the delay. NRS 34.800 does not apply to Marsee's post-conviction petition because it was timely since it was filed within one year from the date this court issued the remittitur in Marsee's direct appeal.<sup>2</sup>

Although the district court erred in denying Marsee's petition pursuant to NRS 34.800, we nonetheless affirm the order of the district court. We conclude that: (1) the district court did not abuse its discretion in refusing to grant Marsee another extension of time to file his supplement to the petition; and (2) the ineffective assistance claims actually presented in the petition are belied by the record.

First, we conclude that district court did not abuse its discretion in denying Marsee a further extension of time to supplement his petition. NRS 34.750(3) provides that counsel may file supplemental pleadings within thirty days after the court orders the filing of the answer and return or the date of counsel's appointment, whichever is later. Here, the district court gave Marsee ample time to supplement his petition, and in fact, Marsee received ten extensions of time over a two-year period to supplement the petition. Accordingly, the district court acted well within its discretion in denying Marsee's request for another extension of time.

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<sup>2</sup>See NRS 34.726(1).

Second, we conclude that the ineffective assistance claims actually presented in the petition are belied by the record. In order 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.<sup>3</sup> 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."<sup>4</sup>

Marsee contends that his counsel was ineffective for failing to: (1) investigate to uncover evidence corroborating Marsee's account of the incident; (2) read the grand jury transcripts to uncover the fact that the victim perjured herself in the grand jury hearing with regard to whether Marsee lived with her and was involved in a business relationship with her; and (3) failing to inform Marsee of all the elements of the charges against him, including the elements of forgery "which was the basis for burglary charge." Marsee further contends that his counsel coerced him into pleading guilty by stating that he would go to prison if he challenged the charges, and that Marsee "finally relented and plead guilty to the offenses in the plea agreement, but he did so without knowing everything concerning the charges."

We conclude that Marsee's contention is belied by the record.<sup>5</sup> Marsee executed a plea agreement acknowledging that he: (1) had

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<sup>3</sup>Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

<sup>4</sup>Hill, 474 U.S. at 59.

<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

discussed the elements of the original charges with his attorney, as well as any possible defense strategies and circumstances that work in Marsee's favor; and (2) understood that the State would have to prove every element of those charges beyond a reasonable doubt. Further, at Marsee's arraignment, Marsee informed the court that he had read the plea agreement, believed pleading guilty was in his best interest, and was pleading guilty freely and voluntarily. Accordingly, the record belies Marsee's contention that he pleaded guilty without knowledge of the charges against him or as a result of coercion.

Further, we disagree with Marsee that counsel was ineffective in recommending that he plead guilty. Marsee received a substantial benefit in exchange for his plea of guilty. Marsee was originally charged with burglary, invasion of the home, coercion, and attempted murder in the instant case and burglary in another case. In exchange for Marsee's guilty plea to invasion of the home and burglary, the State dropped the more severe charges of attempted murder, coercion, and burglary<sup>6</sup> in the present case, and also agreed not to file any charges relating to a series of bad checks cashed by Marsee in the unrelated case. Marsee therefore received a substantial benefit in exchange for his guilty plea.

Additionally, the State presented compelling evidence against Marsee to the grand jury in support of the criminal charges. In particular, the victim testified that Marsee broke down her sliding glass door and her bedroom door, and then told the victim he was going to kill her. Marsee proceeded to stab the victim in the head, beat her severely, and then

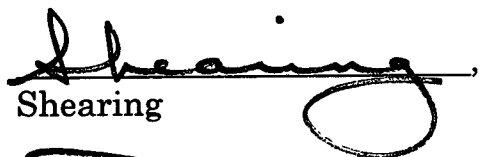
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<sup>6</sup>The burglary count Marsee pleaded guilty to arose from the unrelated case.

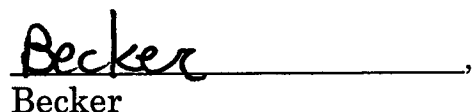
choked her until she blacked out. The victim's injuries were documented in photographs and hospital emergency records. Moreover, her testimony identifying Marsee as the perpetrator was corroborated by a Las Vegas police officer who testified that he apprehended Marsee fleeing from the scene of the attack. Even assuming it could be proven that counsel was deficient in failing to uncover evidence that Marsee lived and worked with the victim, that evidence is not exculpatory with regard to whether Marsee attempted to kill or coerce the victim. Accordingly, Marsee has failed to demonstrate that his counsel was ineffective.

Having considered Marsee'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. John S. McGroarty, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
William J. Taylor  
Clark County Clerk