IN THE SUPREME COURT OF THE STATE OF NEVADA

VICKIE LYNN FARROW,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT OF PRISONS, JACKIE CRAWFORD,
Respondent.

No. 38611

FILED

MAY 15 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 May 25, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of trafficking in a controlled substance (level 3). The district court sentenced appellant to serve a minimum term of ten years to a maximum term of twenty-five years in the Nevada State Prison. This court dismissed appellant's direct appeal.[1]

On July 11, 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 conduct an evidentiary hearing. On September 17, 2001, the district court denied appellant's petition. This appeal followed.

[1]Farrow v. State, Docket No. 36279 (Order Dismissing Appeal, September 6, 2000).

In her petition, appellant claimed that the district court should have found that she had rendered substantial assistance because she gave good information that the police never acted upon. Therefore, she argued that her sentence should be reduced. 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 challenging a conviction based upon a guilty plea.[2] Moreover, appellant substantially raised this claim on direct appeal. This court rejected her challenge to the district court's finding that she had not rendered substantial assistance. The doctrine of the law of the case prevents further relitigation of this issue.[3]

Next, appellant claimed that her trial counsel was ineffective for causing her to withdraw a plea from a more favorable plea bargain, which she had accepted earlier in the proceedings, in order to have the drugs fully tested by a lab to establish the quantity of the drugs.[4] Based upon our review of the record on appeal, we conclude that appellant failed

---

[2]NRS 34.810(1)(a) (providing that the court shall dismiss a petition if the court finds that "The petitioner's conviction was upon a plea of guilty . . . and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.").

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

[4]The record reveals that appellant was arrested with an amount of methamphetamine measuring 34 grams in the field. Appellant was charged with trafficking in a controlled substance (level 3). NRS 453.3385(3) (providing that level 3 trafficking requires a quantity of 28 grams or more). Appellant was originally offered a deal to plead to one count of trafficking in a controlled substance (level 2). NRS 453.3385(2) (providing that level 2 trafficking involves a quantity of 14 to 28 grams).

to demonstrate that her attorney's performance was objectively unreasonable.[5] It was reasonable for appellant's attorney to move to withdraw appellant's first guilty plea on the ground that the drugs had never been tested and that the quantity of drugs had never been established by an admissible test. Appellant's attorney represented that the drugs had not been previously tested because the case had been proceeding under the early case resolution program.[6] Further, the State represented, during a prior hearing conducted on November 19, 1998, that the State would have the drugs tested in a lab and that appellant would receive those results. Appellant, however, had not received any results by her next sentencing date. The State indicated its willingness to allow appellant to withdraw her plea so long as it was clearly stated on the record that appellant would face all of the original charges, including trafficking in a controlled substance (level 3). Appellant was present and did not object to her attorney's withdrawal of her guilty plea after she had been informed of the consequences. After the case was remanded to the justice's court, the record reveals that appellant was for the second time offered a deal to enter a guilty plea to trafficking in a controlled substance

---

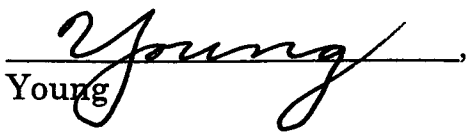
[5]Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); see also Strickland v. Washington, 466 U.S. 668 (1984).

[6]Appellant's attorney stated that the early case resolution program allowed the parties to resolve the case more expeditiously and allowed the parties to bypass preliminary examinations. Appellant's attorney represented that it is during a preliminary examination that the State would present lab results in order to establish probable cause to bind over a defendant on a particular trafficking charge. Appellant's attorney argued that appellant's participation in the program was to her detriment if the drugs were never to be tested in a lab.

(level 2). Appellant entered a not guilty plea, however, when she was arraigned in the district court. Appellant failed to establish that her attorney's withdrawal of her first guilty plea was unreasonable under the facts in this case.

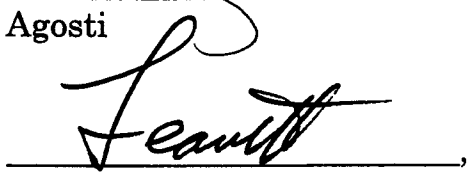
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Young

_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Vickie Lynn Farrow
Washoe District Court Clerk

---

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