

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN HADLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38784

FILED

JUN 05 2002

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of one count each of second degree murder with the use of a firearm and attempted murder with the use of a firearm. The district court sentenced appellant: for murder, to a prison term of 25 years with parole eligibility after 10 years, with an equal and consecutive term for the use of a firearm; and for attempted murder, to a concurrent term of 96 to 240 months, with an equal and consecutive term for the use of a firearm.

Appellant filed a timely direct appeal, and then moved to dismiss the appeal voluntarily. This court granted that motion and dismissed the appeal.<sup>1</sup> Appellant filed a timely petition for a post-conviction writ of habeas corpus. The district court appointed counsel, who supplemented the petition. Following an evidentiary hearing, the district court denied the petition.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not

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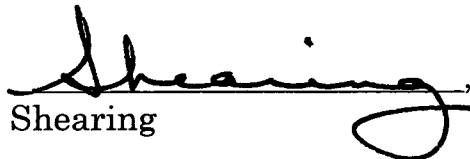
<sup>1</sup>Hadley v. State, Docket No. 35328 (Order Dismissing Appeal, February 25, 2000).

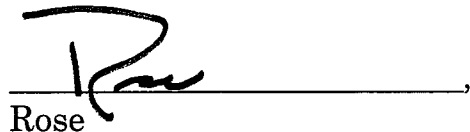
ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>2</sup> Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Appellant also argued below that his plea was involuntary. The district court determined that the plea was validly entered. On appeal, this court "presume[s] that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."<sup>3</sup> Appellant has not demonstrated an abuse of discretion in the district court's determination.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

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<sup>2</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>3</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

cc: Hon. Connie J. Steinheimer, District Judge  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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AMY HERVEY, CLERK

BY  DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

RYAN HADLEY,

Petitioner,

v.

Case No. CR98P2001

THE STATE OF NEVADA,

Dept. No. 4

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

On July 20, 2001 the parties, by and through their respective counsel, Joseph R. Plater, for the State of Nevada, and Karla Butko, for the petitioner, appeared before the Court on petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). After having heard and considered the evidence and testimony, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACTS

1. By way of an information, petitioner was charged with one count of murder with a deadly weapon and two counts of attempted

1 murder with a deadly weapon. Jennifer Lunt of the Washoe County  
2 Public Defender's Office represented petitioner.

3 2. The charges arose when petitioner and Fernando Jimenez were  
4 involved in a shooting in which Eruvey Muzquiz was killed, and  
5 Dean Charley and Brooke Ciampoli were shot. Ms. Lunt and  
6 petitioner met extensively and discussed the evidence supporting  
7 the charges.

8 3. Ms. Lunt and petitioner explored the issue of whether  
9 petitioner had acted in self defense in the shooting of Charley  
10 and Muzquiz. Based on her conversations with petitioner,  
11 Ms. Lunt concluded that self-defense was not a viable defense.  
12 In addition, petitioner refused to assert that his codefendant  
13 was responsible for the crimes, and he would not divulge any  
14 information about the shooting of Musquiz. The evidence also  
15 showed that petitioner deliberately shot Ms. Ciampoli.

16 4. There was evidence (a statement from Shawna Lopez) that  
17 petitioner and his codefendant had conspired to rob Musquiz and  
18 Charley before the shootings occurred. Accordingly, Ms. Lunt  
19 reasonably concluded and advised petitioner that he had no  
20 reasonable chance of defending the charges involving Muzquiz and  
21 Charley at trial.

22 5. Based on his and counsel's analysis of the evidence,  
23 petitioner decided to enter into a plea agreement with the State.  
24 Thus, pursuant to negotiations, petitioner pled guilty to second  
25 degree murder and attempted murder with a deadly weapon.

26 6. Petitioner was initially concerned that his codefendant

1 received a better plea bargain; nevertheless, petitioner told  
2 Ms. Lunt that he wanted to plead guilty pursuant to the plea  
3 agreement. Petitioner voluntarily, knowingly, and intelligently  
4 plead guilty. Ms. Lunt correctly informed petitioner of the  
5 possible punishment petitioner faced both pursuant to his pleas  
6 and if petitioner had elected to go to trial. Ms. Lunt did not  
7 coerce or otherwise improperly influence petitioner to plead  
8 guilty.

9 7. This Court also properly canvassed petitioner about the  
10 possible sentences petitioner faced pursuant to his pleas.  
11 Petitioner's testimony that he was not fully informed about the  
12 possible punishment he faced is rejected and found to be false.

13 8. Petitioner claims that his counsel should have obtained  
14 ballistics testimony and toxicology reports. The Court rejects  
15 this claim. Petitioner failed to prove any prejudice from these  
16 assertions at the evidentiary hearing. In addition, the Court  
17 finds that petitioner had no reasonable chance of presenting a  
18 successful defense based on self-defense.

19 9. Petitioner claimed that his counsel should have presented  
20 mental health evidence at sentencing. This claim is also  
21 rejected because petitioner failed to present any evidence at the  
22 evidentiary hearing proving that petitioner suffered any  
23 prejudice. In addition, this Court was aware of petitioner's  
24 claim that he was under the influence of methamphetamine when the  
25 crimes occurred; any additional evidence at sentencing on the  
26 issue of petitioner's drug use would not have resulted in a

1 different sentence.

2 10. Petitioner claims that his counsel had a conflict in  
3 representing him. The Court finds there was no conflict or  
4 divided loyalty between counsel and petitioner. Counsel for  
5 petitioner met petitioner's codefendant, Mr. Jimenez, for a few  
6 minutes on June 8, 1998, before she was appointed to represent  
7 petitioner. Ms. Lunt and Jimenez did not discuss any facet of  
8 the case or the charges against either defendant. Ms. Lunt  
9 merely told Jimenez not to talk and that she would represent  
10 either him or petitioner at a future time. No loyalty developed  
11 between Jimenez and Ms. Lunt, and the brief encounter between the  
12 two did not interfere in any way with Ms. Lunt's representation  
13 of petitioner.

14 11. Petitioner claims that his appellate counsel should have  
15 sought appellate review of the disparate sentences between him  
16 and his codefendant. This claim is without merit. See Williams  
17 v. Illinois, 399 U.S. 235, 243, 90 S.Ct. 2018, 2023, 26 L.Ed.2d  
18 586 (1970) ("The Constitution permits qualitative differences in  
19 meting out punishment and there is no requirement that two  
20 persons convicted of the same offense receive identical  
21 sentences."). In any event, petitioner voluntarily waived his  
22 appeal.

23 12. Petitioner also claims that his counsel disclosed  
24 confidential information in violation of the attorney-client  
25 privilege. The Court denies this claim. This Court met with  
26 counsel in chambers. However, no facts or issues about the

1 defense or prosecution were discussed. When the Court stated at  
2 sentencing that Ms. Lunt and the prosecutor had made the Court  
3 aware of the facts of petitioner's plea, the Court was referring  
4 to the fact that petitioner had pled guilty and had thus admitted  
5 his involvement in the crimes and had accepted responsibility.  
6 The Court, in essence, was noting that petitioner would have  
7 received consecutive time had the State not argued for concurrent  
8 time because there was some uncertainty about how the crimes  
9 occurred.

10 13. The Court finds that petitioner abandoned the remaining  
11 claims he alleged in his original petition; nevertheless, the  
12 Court finds that none of them have merit.

13 CONCLUSIONS OF LAW

- 14 1. Petitioner received effective assistance of counsel.  
15 2. The Petition for Writ of Habeas Corpus (Post-Conviction) is  
16 hereby denied.

17 DATED this 10 day of October, 2001.

18  
19 Connie J. Steinheimer  
20 DISTRICT JUDGE  
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