IN THE SUPREME COURT OF THE STATE OF NEVADA

ATIBA M. MOORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38823

FILED

NOV 12 2002

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 15, 2001, the district court convicted appellant, pursuant to a guilty plea, of two counts of robbery. The district court sentenced appellant to serve two concurrent terms of thirty-five months to one-hundred twenty months in the Nevada State Prison. No direct appeal was taken.

On August 28, 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 November 27, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first raised several claims of ineffective assistance of counsel. 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.[1] 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 former counsel in district court case C166338, Linda M. Bell, rendered ineffective assistance at the preliminary hearing by (1) asking only one question of one witness during cross examination, and (2) failing to call any witnesses for the defense, including the arresting detective.[3] We conclude the district court did not err in denying these claims. Appellant's claims were belied by the record and unsupported by specific facts.[4] The record indicates that appellant's counsel sufficiently cross-examined the State's witnesses. Additionally, appellant failed to provide a specific description of what the arresting detective would have testified to had he been called as a defense witness, and failed to specify the names or potential testimony of any other witnesses that he claimed should have been called.

Second, appellant claimed that his former counsel, Paul E. Wommer,[5] was ineffective for failing to oppose the State's motion to

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

[2]See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

[3]Appellant's district court cases C166338 and C166277 were subsequently consolidated.

[4]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[5]After appellant's cases were consolidated, appellant filed a "Motion to Dismiss Counsel and allow defendant to proceed in pro-per" that was

continued on next page . . .

consolidate appellant's criminal cases, and that consolidation of the cases resulted in appellant being deprived of a speedy trial. Specifically, appellant argued that the delay caused by consolidation reduced his ability to find any of the witnesses he intended to call at trial. Appellant's claim is belied by the record and unsupported by specific facts.[6] Appellant's counsel did file a written opposition to the State's motion to consolidate. Further, appellant failed to specify the names or potential testimony of any of the witnesses he intended to call. Thus we conclude that appellant failed to demonstrate that he suffered any prejudice from the consolidation of his criminal cases.

Third, appellant claimed that his former counsel, Linda M. Bell, rendered ineffective assistance because she advised appellant to accept a plea bargain in which the recommended sentence would be a six to forty-five year term. We conclude the district court did not err in denying this claim. Appellant requested and was allowed to represent himself after the court determined that he was competent to do so. Thereafter, appellant voluntarily and knowingly decided to enter a guilty plea to two counts of robbery to avoid being prosecuted for additional counts. Ultimately, appellant was sentenced to two concurrent prison

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. . . *continued*
granted by the district court. Thereafter, the district court removed Wommer as counsel of record and confirmed Gregory Denue as appellant's standby counsel. Denue served as appellant's standby counsel during the plea canvass and sentencing.

[6]See Hargrove, 100 Nev. 498, 686 P.2d 222.

terms of thirty-five months to one-hundred twenty months.[7] Thus we conclude that appellant failed to demonstrate that he suffered any prejudice.

Fourth, appellant claimed that he received ineffective assistance of counsel because when appellant filed complaints with the state bar against his former attorneys, Linda M. Bell and Elizabeth Quillin, a conflict of interest was created. We conclude the district court did not err in denying this claim. As discussed previously, appellant represented himself and decided to plead guilty. Thus, appellant failed to provide sufficient facts demonstrating how he was prejudiced by his former counsels' conduct.[8]

Finally, appellant claimed that he was deprived of the right to represent himself because (1) he did not get a copy of the presentence report until shortly before sentencing, which made him unable to fully prepare for sentencing, and (2) other documents in his case were allegedly mailed to another attorney after sentencing. Appellant waived these claims by failing to raise them in a direct appeal and failing to demonstrate good cause and prejudice for his failure to do so.[9]

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[7]See generally Faretta v. California, 422 U.S. 806, 834 n.46 (1975) ("[A] defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'").

[8]See Hargrove, 100 Nev. 498, 686 P.2d 222.

[9]See 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).

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Atiba M. Moore
Clark County Clerk

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