IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY D. GOODRICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38897

FILED

JUN 12 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Rubach
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 July 18, 2000, the district court convicted appellant, pursuant to an Alford[1] plea, of second degree murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and conspiracy to commit robbery. The district court sentenced appellant to serve: two consecutive terms of 10 to 25 years in the Nevada State Prison for the murder count; two consecutive terms of 72 to 180 months for the robbery count, to be served consecutively to the terms imposed for the murder; and a term of 28 to 72 months for the conspiracy to commit robbery, to be served concurrently with the terms imposed for the robbery count. The sentence in the instant case was ordered to run consecutive to the sentence imposed in another district court case, C154257. No direct appeal was taken.

[1]North Carolina v. Alford, 400 U.S. 25 (1970).

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On April 27, 2001, appellant filed a proper person "Motion for Enlargement of Time Within Which to File Petition for Writ of Habeas Corpus (Post Conviction)." Appellant requested to and including October 18, 2001, within which to file his petition. The State did not oppose the motion. On May 15, 2001, the district court entered a written order granting the motion.[2]

On July 24, 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 December 27, 2001, the district court denied appellant's petition as untimely and without merit. This appeal followed.

Appellant filed his petition more than one year after entry of the judgment of conviction. Thus, appellant's petition was untimely filed.[3] Appellant's petition was procedurally barred absent a demonstration of cause for the delay and prejudice.[4] Although appellant made no attempt

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[2]On May 8, 2001, the district court announced from the bench that it would grant appellant's motion and allow appellant until August 8, 2001, to file the petition.

[3]See NRS 34.726(1); see also Gonzales v. State, 118 Nev. __, 53 P.3d 901 (2002) (declining to extend the mailbox rule to the filing of habeas corpus petitions and holding that a habeas corpus petition must be filed in the district court within the applicable statutory period).

[4]See id.

to demonstrate cause for the delay in his habeas petition, our review of the record on appeal indicates that appellant may have been misled into believing that he was not required to show cause for the delay after the district court granted appellant's motion for an extension of time to file his petition, and apparently authorized appellant to file his petition by August 8, 2001. Thus, the district court's order purporting to extend the one-year filing deadline may, in itself, constitute good cause to excuse the delay in filing his petition. Nonetheless, as discussed below, the claims presented in appellant's petition lack merit.

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.[5] 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.[6]

First, appellant claimed his counsel rendered ineffective assistance by allowing appellant to enter a guilty plea that was not knowing, intelligent, or voluntary. Specifically, appellant claimed that the plea agreement was a product of fear, coercion, and a promise of leniency.

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[5]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).

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

The record belies appellant's claims. At the plea canvass, appellant's counsel stated the terms of the plea agreement to the court in appellant's presence, and appellant affirmed that he had heard the terms, had read and understood the plea agreement, and was entering his plea freely and voluntarily. Appellant further affirmed that no one had made any promises to him to induce him to plead guilty, and that no threats had been made to cause him to plead guilty. Appellant also affirmed to the court that he understood the potential penalties he was facing, and that no one could promise appellant probation, leniency, or special treatment, as sentencing decisions were to be made solely by the district court. Thus, we conclude that appellant is not entitled to relief on these claims.

Second, appellant claimed his counsel rendered ineffective assistance by failing to inform appellant of his right to a direct appeal and failing to file a notice of appeal on appellant's behalf. There is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal, unless the defendant inquires about an appeal, or a direct appeal claim exists that has a reasonable likelihood of success.[7] Appellant does not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Moreover, the written guilty plea agreement, which appellant affirmed he understood at the plea canvass, informed him of his limited

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[7]See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).

right to a direct appeal.[8] Thus, we conclude that appellant failed to demonstrate that he was prejudiced by any alleged deficiency of counsel regarding appellant's right to appeal.

Third, appellant claimed that his counsel was ineffective for (1) his "overall performance," (2) allowing appellant to be subjected to double jeopardy, (3) failing to challenge the deadly weapon enhancements, (4) failing to challenge the indictment and the sufficiency of the evidence supporting the charges, and (5) failing to file pretrial motions to suppress appellant's incriminatory statements made to police while "under sedation of morphine." By pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea.[9] Thus, appellant is not entitled to relief on these claims.

Finally, appellant claimed that his due process rights had been violated (1) because the prosecution committed misconduct by abusing the grand jury system, and (2) because of "cumulative errors depriving [appellant] of a fair judicial proceeding." 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.[10]

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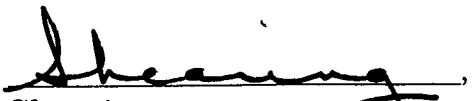
[8]See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

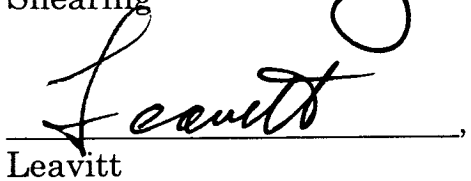
[9]See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

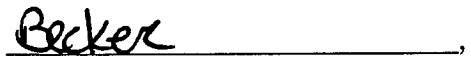
[10]See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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.[11] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[12]

 , J.
Shearing

 , J.
Leavitt

 , J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Randy D. Goodrick
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

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