IN THE SUPREME COURT OF THE STATE OF NEVADA

ARCHIE NICHOLES MIHALCHEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39490

FILED

DEC 0 9 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On March 2, 2001,[1] appellant was convicted, pursuant to a guilty plea, of one count of felony driving under the influence. The district court sentenced appellant to serve a prison term of 28 to 72 months. Appellant did not file a direct appeal.

On March 11, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 1, 2002, the district court denied appellant's petition. This appeal followed.

[1]We note that although the judgment of conviction was dated March 8, 2001, it was filed in the district court on March 2, 2001, the same date that appellant was sentenced.

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Appellant filed his petition more than one year after the entry of the judgment of conviction.[2] 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] In the petition, appellant failed to allege good cause or prejudice to excuse his procedural default. Because appellant failed to establish good cause for the untimely petition, it is procedurally barred, and we explicitly conclude that the petition should have been denied on that basis.[5]

We note, however, that the district court correctly determined that appellant's petition lacked merit, and we affirm the district court's ruling on that separate, independent ground.[6] In the petition, appellant claimed that his trial counsel were ineffective because they: (1) did not

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[2]Even assuming the judgment of conviction was effective on March 8, 2001, as appellant suggests, it was still three days late since the last day for the filing of a timely petition was Friday, March 8, 2002. See NRS 34.726(1).

[3]See NRS 34.726.

[4]See id.

[5]See generally Harris v. Reed, 489 U.S. 255, 263 (1989) (holding that procedural default does not bar federal review of claim on the merits unless state court rendering judgment relied "clearly and expressly" on procedural bar) (citation omitted).

[6]Id. at 264 n.10 (holding that as long as the state court explicitly invokes a state procedural bar, "a state court need not fear reaching the merits of a federal claim in an alternative holding").

communicate with him; and (2) coerced appellant into accepting a guilty plea based on promises undisclosed in the record.[7] Appellant's claims are belied by the record.[8]

At appellant's plea canvass, appellant represented to the district court that he was satisfied with the legal services rendered by the public defender's office. Moreover, appellant informed the district court that he had not been made any promises, and no one had threatened him in order to induce him to plead guilty. In exchange for his plea bargain, appellant received a substantial benefit; namely, the State agreed to concur with the recommendation of the Division of Probation and Parole. Finally our review of the plea canvass and the plea agreement indicates that appellant's guilty plea was knowing, voluntary, and intelligent; he was advised of the direct consequences of his criminal conviction and the constitutional rights he was waiving by pleading guilty. Accordingly, the district court did not err in rejecting appellant's claims that his counsel were ineffective.

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[7]Appellant also claims that his trial counsel were ineffective for failing to present evidence of the blood test in court. We conclude that the district court did not err in rejecting appellant's claim. Because appellant pleaded guilty and did not proceed to trial, trial counsel were not ineffective for failing to present evidence of appellant's blood alcohol level.

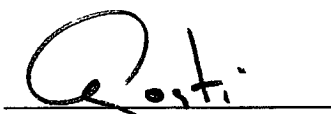
[8]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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.[9] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Young

_____, J.
Rose



_____, J.
Agosti

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Archie Nicholes Mihalchean
Washoe District Court Clerk

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