

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWIGHT HANZY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39778

FILED

APR 25 2003

JANE M. ALLEN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On April 5, 2001, the district court convicted appellant Dwight Hanzy, pursuant to a guilty plea, of grand larceny. The district court sentenced Hanzy to serve a term of forty-eight to one hundred twenty months in the Nevada State Prison. No direct appeal was taken.

On April 5, 2002, Hanzy 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 NRS 34.770, the district court declined to appoint counsel to represent Hanzy or to conduct an evidentiary hearing. On June 7, 2002, the district court denied Hanzy's petition. This appeal followed.

In his petition, Hanzy raised several claims of ineffective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance

prejudiced the defense.<sup>1</sup> To show prejudice, a petitioner must show a reasonable probability that but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.<sup>2</sup> "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."<sup>3</sup> A court may consider the two test elements in any order and need not consider both prongs if an insufficient showing is made on either one.<sup>4</sup>

First, Hanzy claimed that counsel was ineffective for failing to request a competency hearing prior to the entry of his guilty plea. Hanzy argued that his behavior prior to the entry of his plea raised a reasonable doubt as to his competency. Specifically, Hanzy points to the fact that he refused to change into street clothes for his scheduled jury trial, his lack of communication, and his accusations regarding his counsel's failure to contact alibi witnesses. Initially, we note that Hanzy's reliance on NRS 178.415 in support of his argument is misplaced; NRS 178.415 merely provides the procedure for determining competency once the district court determines that a reasonable doubt exists as to a defendant's competency.<sup>5</sup>

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<sup>1</sup>Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

<sup>2</sup>Kirksey, 112 Nev. at 988, 923 P.2d at 1107; citing Strickland, 466 U.S. at 694.

<sup>3</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691).

<sup>4</sup>Strickland, 466 U.S. at 697.

<sup>5</sup>See NRS 178.415; see also Melchor-Gloria v. State, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983); Williams v. State, 85 Nev. 169, 174, 451 P.2d 848, 852 (1969) ("A determination whether doubt exists rests largely

*continued on next page . . .*

Based on the record on appeal, we conclude that Hanzy failed to demonstrate there was a reasonable doubt as to his competency which would have necessitated a formal hearing. Therefore, Hanzy failed to establish that counsel was ineffective in this regard.

Second, Hanzy claimed that counsel was ineffective for failing to file a timely notice of intent to present an alibi defense. This claim is belied by the record.<sup>6</sup> A notice of alibi was filed on November 22, 2000. Therefore, Hanzy failed to establish that counsel was ineffective in this regard.

Third, Hanzy claimed that counsel was ineffective for failing to investigate alibi witnesses. Hanzy argued that these witnesses would have testified that Hanzy was not in Las Vegas at the time in question. Hanzy entered his plea on November 28, 2000. At that time he complained to the district court that counsel had not investigated these witnesses. Hanzy's counsel informed the district court that Hanzy had only given her the names of the witnesses six days previously.<sup>7</sup> Hanzy's entry of a guilty plea relieved counsel of any obligation to further

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*... continued*

within the discretion of the trial judge.") (citations omitted); Melchor-Gloria, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (holding that in determining whether a competency hearing is required, the court should focus on three factors: any history of irrational behavior by the defendant, his demeanor before the court, and any prior medical opinion of his competency) (citing Drope v. Missouri, 420 U.S. 162, 180 (1975)).

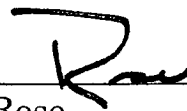
<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>7</sup>Six days prior to the hearing was November 22, 2000, the day that the notice of alibi was filed.

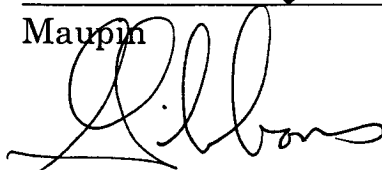
investigate the matter. Therefore, Hanzy failed to establish that counsel was ineffective in this regard.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hanzy is not entitled to relief and that briefing and oral argument are unwarranted.<sup>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge  
Dwight Hanzy  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).