IN THE SUPREME COURT OF THE STATE OF NEVADA

BETHANY SHIANTI ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39816

FILED

JUN 20 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 16, 2001, the district court convicted Allen, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced Allen to serve a term of 24 to 180 months in the Nevada State Prison for the robbery conviction and a consecutive term of 24 to 180 months for the use of a deadly weapon enhancement. No direct appeal was taken.

On January 10, 2002, Allen filed a 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 Allen or to conduct an evidentiary hearing.

03-10308

The district court issued identical orders on April 10, 2002, and April 29, 2002, denying Allen's petition.[1] This appeal followed.

In her petition, Allen made numerous allegations that she received ineffective assistance of counsel and, therefore, her guilty plea and sentence are invalid.

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 her counsel's performance fell below an objective standard of reasonableness.[2] A petitioner must further demonstrate a reasonable probability that, but for counsel's errors, she would not have pleaded guilty and would have insisted on going to trial.[3]

Initially, Allen contended that her counsel failed to communicate with her concerning the substantive and procedural law such that she was unable to make a sound decision regarding her plea agreement, failed to visit or otherwise communicate with her, failed to investigate the admissibility of bad act evidence, and failed to meet with

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[1]We note that the district court's orders incorrectly stated that Allen filed her petition on January 17, 2002, and that she was represented by counsel during the March 28, 2002, hearing on the petition. The State has argued that Allen was procedurally barred from filing her petition, pursuant to NRS 34.726(1). Because Allen actually filed her petition on January 10, 2002, we conclude that the State's argument is without merit.

[2]See Hill v. Lockhart, 474 U.S. 52, 57 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

[3]See Hill, 474 U.S. at 59; Kirksey, 112 Nev. at 988, 923 P.2d at 1107.

her prior to her sentencing hearing. However, Allen failed to support her allegations with any specific facts that would entitle her to relief.[4] Therefore, she failed to demonstrate that her counsel was ineffective.

Next, Allen contended that her counsel was absent at a majority of court appearances, failed to inform her of her rights under the plea agreement, failed to review her pre-sentence investigation report for errors, failed to inform her of the possible penalty she faced by entering into the plea agreement, and failed to argue on her behalf at sentencing.

Contrary to Allen's allegations, however, our review of the record, which includes the plea agreement, pre-sentence investigation report, plea canvass, and hearing transcripts, indicates that she was represented by her original counsel, or substitute counsel, at all relevant court proceedings. The record also reveals that, on multiple occasions, Allen expressly indicated her understanding of the penalties she faced by entry of her plea. Both the plea agreement and Allen's statements to the district court indicate that her counsel had answered all of her questions. In fact, Allen's original arraignment was specifically continued so that all of her questions regarding the plea agreement could be answered. Allen's counsel also indicated at her sentencing hearing that he had reviewed her pre-sentence investigation report, and he argued for the district court to impose the minimum sentence with the possibility of parole. We conclude

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[4]See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

that Allen's allegations were repelled or belied by the record.[5] Therefore, she failed to demonstrate that her counsel was ineffective.

Allen further contended that her counsel failed to inform her that she could withdraw her plea prior to her sentencing hearing and that she was incorrectly informed by her counsel that she could be sentenced to life in prison if she withdrew her guilty plea.

The record reveals that Allen appeared before the justice court and district court several times. During three of these appearances, Allen spoke directly with the court, but never indicated that she wished to withdraw her plea, despite these opportunities. Her allegation is in part belied by the record.[6] Moreover, Allen has also failed to state a basis on which she could have successfully withdrawn her plea, even if she had attempted to do so. As such, Allen has not shown how she has suffered any prejudice by any alleged misstatement of the law by her counsel. It is noteworthy that Allen was originally charged with one count of burglary while in possession of a firearm, one count of conspiracy to commit robbery, and three counts of robbery with the use of a deadly weapon. If convicted on all five counts, Allen faced at least the possibility of being sentenced to serve a maximum term that could effectively amount to life in prison.[7] The advice that Allen's counsel allegedly gave her was not

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[5]See id. at 503, 686 P.2d at 225.

[6]See id.

[7]See NRS 193.165; NRS 199.480; NRS 200.380; NRS 205.060.

unreasonable. Therefore, Allen failed to demonstrate that her counsel was ineffective.

Additionally, Allen contended that her counsel failed to investigate three other suspects allegedly involved in the crime, failed to assert her innocence, and failed to give advice regarding her right to a speedy trial. However, Allen pleaded guilty to one count of robbery with the use of a deadly weapon. Whether there were other suspects involved in the crime is irrelevant to her admitted guilt. As well, the issue of guilt or innocence is generally not a basis for a challenge to a guilty plea.[8] Allen further failed to state what difference it would have made in her decision to plead guilty even if she was informed of her right to a speedy trial. Each of these allegations is, therefore, without merit. Therefore, she failed to demonstrate that her counsel was ineffective.

Finally, Allen contended that her counsel failed to return her case file in a timely manner. However, Allen's allegation is outside of the scope of a petition for habeas corpus because it does not concern the validity of her judgment of conviction.[9] Even if true, as her petition has not been procedurally barred, Allen failed to show how she has suffered any prejudice by her counsel's alleged conduct.[10]

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[8]See Hargrove, 100 Nev. at 503, 686 P.2d at 226.

[9]See NRS 34.810(1)(a).

[10]Allen also challenged the constitutional validity of her confession, and related law enforcement conduct. However, Allen has not supported

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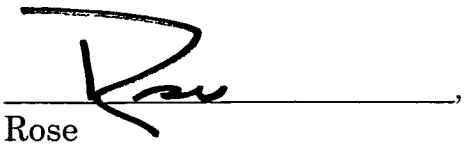
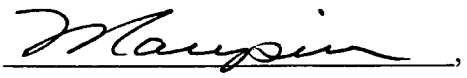
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Allen is not entitled to relief and that briefing and oral argument are unwarranted.[11] Accordingly, we

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



_____, J.
Rose



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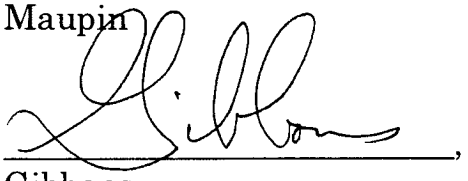

_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Bethany Shianti Allen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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her allegation with sufficient facts, and we have previously held that a defendant may not raise independent constitutional claims when she has admitted her guilty in open court. See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

[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.