

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ARNOLD PETERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39819

FILED

MAR 31 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Roberts*  
CHIEF DEPUTY CLERK

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 25, 2001, the district court convicted appellant Jeffrey Peters, pursuant to a guilty plea, of attempting to leave the scene of an accident involving the death of a human being. The district court sentenced Peters to serve a term of twenty-two to ninety-six months in the Nevada State Prison. This court dismissed Peters' direct appeal pursuant to a stipulation by the parties.<sup>1</sup>

On April 23, 2002, Peters 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 Peters or to conduct an evidentiary hearing. On May 20, 2002, the district court denied Peters' petition. This appeal followed.

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<sup>1</sup>Peters v. State, Docket No. 37927 (Order Dismissing Appeal, November 30, 2001).

In his petition, Peters raised two 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>2</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>3</sup> "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."<sup>4</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>5</sup>

First, Peters claimed that counsel was ineffective for informing him that if he pleaded guilty he would receive probation. This claim is belied by the record.<sup>6</sup> Peters signed a written plea agreement which stated he understood that as a consequence of his plea he could be imprisoned for one to ten years, that the State agreed not to object to

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

<sup>3</sup>Kirksey, 112 Nev. at 988, 923 P.2d at 1107; citing Strickland, 466 U.S. at 694.

<sup>4</sup>Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691).

<sup>5</sup>Strickland, 466 U.S. at 697.

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

probation if it was recommended by the Division of Parole and Probation, and that sentencing would be determined solely by the district court. Therefore, Peters failed to establish that counsel was ineffective in this regard.

Second, Peters claimed that counsel was ineffective for advising him not to attend the grand jury hearing. According to Peters, this led to animosity towards him on the part of the victim's family, which resulted in him not being granted probation. The fact that the feelings of the victim's family towards Peters were discussed at length by the defense counsel during the sentencing hearing indicates that Peters was aware of how they felt. Moreover, the statements made by the family members at sentencing did not reflect any animosity as a result of Peters not attending the grand jury hearing. Therefore, Peters failed to show a reasonable probability that but for counsel's advice regarding this matter, he would not have pleaded guilty and would have insisted on going to trial

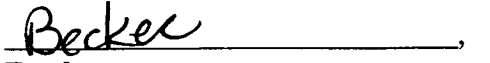
Peters also challenged the presentence investigation report. According to Peters, the report contained incorrect information which resulted in him not being granted probation. At the sentencing hearing, Peters' counsel thoroughly challenged the alleged inaccuracies. In sentencing Peters, the district court found that, based on Peters' "substantial . . . criminal history, most particularly his drunk driving criminal history," the sentencing recommendation was fair. Therefore, Peters failed to establish that his sentence was a result of any inaccurate information in the report.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Peters is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Leavitt

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Janet J. Berry, District Judge  
Jeffrey Arnold Peters  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>7</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.