IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ROBERT SCOVILLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40721

FILED

JAN 28 2004

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

ORDER OF AFFIRMANCE

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

On July 13, 2001, the district court convicted Scoville, pursuant to a guilty plea, of driving under the influence of alcohol (count I) and failure to appear (count II). At the sentencing hearing, but prior to the imposition of his sentence, Scoville made a motion to withdraw his guilty plea. The district court denied the motion and sentenced Scoville to serve a term of six years in the Nevada State Prison for count I, and a consecutive 12 to 30 months in the Nevada State Prison for count II.[1] This court affirmed the conviction on appeal.[2] The remittitur issued on January 2, 2002.

On February 20, 2002, Scoville filed a motion to modify his sentence and amend judgment in the district court. The State opposed the

[1]The original judgment of conviction contained a clerical error in that it stated that Scoville's sentences were to run concurrently. On November 8, 2001, an amended judgment of conviction was entered which provided that Scoville's sentences were to run consecutively.

[2]Scoville v. State, Docket No. 38312 (Order of Affirmance, December 6, 2001).

motion. On March 11, 2002, the district court denied Scoville's motion. No appeal was taken.

On July 8, 2002, Scoville 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, the district court declined to appoint counsel to represent Scoville. On July 29, 2002, the district court denied the majority of Scoville's petition, but ordered an evidentiary hearing on two of Scoville's claims.[3] On September 9, 2002, the district court held an evidentiary hearing to determine whether Scoville's attorney was ineffective for filing an appeal against Scoville's wishes, and to determine the appropriate credit for pre-sentence incarceration. The district court subsequently granted Scoville's request for additional credit for pre-sentence incarceration,[4] but denied his ineffective assistance of counsel claim. This appeal followed.

In his petition, Scoville made numerous allegations of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.[5] Further, a petitioner must demonstrate "a

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[3]See NRS 34.770.

[4]An amended judgment of conviction was entered on September 13, 2002, which credited Scoville with 40 additional days of pre-sentence incarceration.

[5]Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[6]

Scoville contended that his first attorney,[7] J. Forest Cahlan, was ineffective for (1) refusing to discuss the case and possible defenses with him, (2) failure to investigate and interview witnesses, (3) failure to inform him of mandatory court dates, (4) refusing to talk with him on the phone, and (5) destroying his file. Scoville failed to support these claims with specific facts and articulate how his counsel's performance was deficient in these areas.[8] Further, Scoville did not demonstrate a reasonable probability that he would have insisted on going to trial if his attorney had not been ineffective on these issues. Therefore, we conclude that the district court did not err in denying these claims.

Scoville next claimed that attorney Cahlan was ineffective for conspiring with the district attorney to have a warrant issued for his arrest. A review of the record reveals that Cahlan and the district attorney stipulated to have a bench warrant issued for Scoville because Cahlan did not know Scoville's whereabouts and his trial was two weeks away. Scoville did not establish that Cahlan's actions were unreasonable in this situation. Further, Scoville failed to demonstrate that he would not have pleaded guilty and would have insisted on going to trial if Cahlan

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[6]Hill v. Lockhart, 474 U.S. 52, 59 (1985); see Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

[7]Scoville had five different attorneys prior to entering his guilty plea—J. Forest Cahlan, Jason Earnest, Peter and Leo Flangas, and Harold Kuehn. Kuehn was Scoville's attorney at the time he entered his guilty plea and handled the subsequent direct appeal.

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

had not stipulated to the issuance of a bench warrant. Therefore, we affirm the order of the district court on this issue.

Scoville claimed that his third attorney, Peter Flangas, was also ineffective. Scoville argued that Flangas was ineffective for having his son, Leo Flangas, take over the case without Scoville's consent. Further, Scoville claimed he was prejudiced because Peter Flangas went on vacation, causing Scoville's trial to be postponed. We conclude that the trial court did not err in denying these claims. Scoville failed to demonstrate that he would not have pleaded guilty and would have insisted on going to trial if Peter Flangas had not allowed his son to work on Scoville's case or gone on vacation. Therefore, we affirm the order of the district court on these issues.

Scoville next argued that attorney Leo Flangas was ineffective for failing to inform him of the correct location of his December 7, 2000 court date and failing to properly explain his absence to the district court.[9] Scoville contended that Flangas told him to be in Pahrump for the court appearance. When Scoville arrived at the courthouse in Pahrump on December 7 and Flangas was not present, he called Flangas and was told that he needed to be in Tonopah. Scoville told Flangas that he had no transportation to Tonopah, yet Flangas informed the district court that he did not know why Scoville was not present. A bench warrant was issued and Scoville was charged and eventually pleaded guilty to felony failure to appear as a result of this incident.

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[9]Although Scoville asserted that Leo Flangas was ineffective on this issue, the transcript of the December 7, 2000 court proceedings states that Peter Flangas, rather than Leo Flangas, was present to represent Scoville.

A review of the record on appeal reveals that this incident was the third one in which Scoville failed to appear for a court date concerning this case. Flangas informed the district court that Scoville previously thought the proceeding was going to be in Pahrump, but was told the day before that it was in Tonopah, and Flangas could offer no explanation concerning Scoville's non-appearance. After the bench warrant was issued, Scoville did not appear in court again until May 7, 2001. Even assuming that Flangas did indeed incorrectly inform Scoville of the location of his court appearance, this does not adequately explain his delay in returning to court. If Scoville had surrendered himself within 30 days of his missed court date, he would not have committed felony failure to appear in this instance.[10] We conclude that Scoville failed to demonstrate that Flangas' performance prejudiced his defense, such that he would have insisted on going to trial if this alleged miscommunication had not occurred. Therefore, the district court did not err in denying this claim.

Scoville next contended that his most recent attorney, Harold Kuehn, was also ineffective. Scoville first argued that Kuehn was ineffective for refusing to discuss his case with him. Scoville failed to support this claim with specific facts and articulate how counsel's performance was deficient in this area.[11] Therefore, Scoville did not establish that his counsel was ineffective in this regard.

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[10]See NRS 199.335(1) (providing that a person who is admitted to bail, is not recommitted to custody, and fails to make an appearance is guilty of failure to appear, unless the person surrenders himself no later than 30 days after the missed appearance).

[11]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Second, Scoville argued that attorney Kuehn was ineffective for failing to request a competency hearing, despite his knowledge that Scoville was depressed and had other psychological problems. Scoville did not provide specific facts concerning his contention that depression rendered him incompetent to stand trial, nor did he elaborate on his other psychological problems.[12] Further, during the entry of his plea, the district court stated that Scoville appeared to be alert and understood the proceedings. Scoville replied that this was correct. Therefore, Scoville's allegation is also belied by the record.[13] We conclude that Scoville's contention that he should have been afforded a competency hearing is without merit and he failed to demonstrate that Kuehn was ineffective on this issue.

Third, Scoville contended that attorney Kuehn was ineffective for coercing him into accepting the plea agreement. A review of the record on appeal reveals that at the time he entered his plea, Scoville informed the district court that he had been mentally coerced to do so. Kuehn told the district court that he advised Scoville to accept the plea, but also informed Scoville that if he did not want to accept the offer, he could go to trial. In his petition, Scoville did not provide specific facts describing how he was coerced by Kuehn into accepting the plea agreement.[14] We therefore conclude that Scoville failed to demonstrate that his attorney was ineffective in this regard and affirm the order of the district court on this issue.

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[12]Id.

[13]Id. at 503, 686 P.2d at 225.

[14]Id. at 502, 686 P.2d at 225.

Fourth, Scoville argued that attorney Kuehn was ineffective for appealing his conviction, despite his request not to do so. Scoville contended that he wanted another attorney to handle his appeal. The district court conducted an evidentiary hearing on this issue. Kuehn testified at the hearing and provided two letters he received from Scoville concerning an appeal. In the first letter, Scoville requested that Kuehn handle the appeal, and in the second letter, Scoville asked Kuehn for an update concerning his appeal. Scoville testified that he mailed Kuehn a letter asking him not to appeal. Scoville, however, had no evidence that this letter was sent and Kuehn denied receiving it. At the conclusion of the evidentiary hearing, the district court found that Scoville failed to demonstrate that Kuehn filed an appeal against his wishes. This court will generally defer to factual findings of the district court.[15] We conclude that the district court's determination is supported by substantial evidence and is not clearly wrong.[16] Therefore, we affirm the order of the district court on this issue.

Next, Scoville contended that his plea was involuntary because the district court's canvass was inadequate, vague, and misleading. On direct appeal, this court found that Scoville was canvassed thoroughly by the district court at the time he entered his plea. Further, this court concluded that under the totality of the circumstances, Scoville's plea was valid. The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and

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[15]See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

[16]Id.

precisely focused argument."[17] Therefore, we affirm the order of the district court on this issue.

Finally, Scoville contended that (1) the justice court failed to promptly notify him of the charges against him, (2) he did not receive a timely preliminary hearing, (3) his waiver of the preliminary hearing was invalid, (4) the justice court did not allow discovery of evidence and witnesses, (5) the justice court did not have jurisdiction, (6) his charges should have been brought by indictment, (7) he was not afforded a speedy trial, (8) the district court abused its discretion in refusing to allow him to withdraw his guilty plea, and (9) the district court based his sentence on mistaken assumptions concerning his criminal record that worked to his extreme detriment. Specifically, Scoville contended that the State failed to prove his prior convictions, which were used to enhance his driving under the influence conviction to a felony.[18] The above claims fall outside the scope of a post-conviction petition for a writ of habeas corpus when the conviction is based on a guilty plea.[19] Accordingly, the district court did not err in rejecting them.

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[17]Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

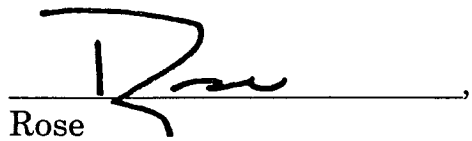
[18]This last claim would be more appropriately raised in a motion for sentence modification. See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996). We note, however, that this court addressed the issue of Scoville's prior convictions on direct appeal and found no error. See Hall, 91 Nev. 314, 535 P.2d 797.

[19]See NRS 34.810(1)(a) (providing that the court shall dismiss a petition for a writ of habeas corpus if the conviction was the result of a guilty plea and the petition is not based on an allegation that the plea was involuntarily or unknowingly entered, or the plea was entered without the effective assistance of counsel).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Scoville is not entitled to relief and that briefing and oral argument are unwarranted.[20] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[21]

Shearing, C.J.



Rose, J.

Maupin, J.

cc: Hon. John P. Davis, District Judge
Jeffrey Robert Scoville
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

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

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