

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARON DIONTAE WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41135

FILED

MAY 11 2004

ORDER OF REVERSAL AND REMAND

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

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

On November 6, 2001, the district court convicted White, pursuant to an Alford plea,¹ of one count of voluntary manslaughter with the use of a deadly weapon (count I), and one count of burglary while in possession of a firearm (count II). The district court sentenced White to serve a term of 120 months in the Nevada State Prison with the possibility of parole in 48 months, plus an equal and consecutive term for the use of a deadly weapon for count I. The district court sentenced White to serve an

¹See North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

additional consecutive term of 120 months with the possibility of parole in 36 months for count II. This court dismissed White's direct appeal.²

On November 8, 2002, White 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 34.770, the district court declined to appoint counsel to represent White or to conduct an evidentiary hearing. On February 6, 2003, the district court issued an order denying White's petition. This appeal followed.

In his petition, White contended that his trial counsel was ineffective for advising him to enter his Alford plea, and that the district court erred by accepting it.

To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that his trial counsel's performance fell below an objective standard of reasonableness.³ A petitioner must also show a reasonable probability that, but for his trial counsel's errors, "he would not have pleaded guilty and would have insisted on going to trial."⁴

²White v. State, Docket No. 38893 (Order Dismissing Appeal, April 30, 2002).

³See Hill v. Lockhart, 474 U.S. 52, 57 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

⁴Kirksey, 112 Nev. at 988, 923 P.2d at 1107 (quoting Hill, 474 U.S. at 59).

Additionally, a guilty plea is presumptively valid, and the burden is on the petitioner to show that it was not freely, knowingly, and voluntarily entered under a totality of the circumstances.⁵ When a guilty plea is entered pursuant to Alford, the district court must determine that there is a factual basis for the plea and resolve the conflict between the defendant's waiver of trial and claim of innocence.⁶ A petitioner is entitled to an evidentiary hearing if he raised claims that were not belied by the record and, if true, would entitle him to relief.⁷

White specifically contended in his petition that the State failed to proffer a sufficient factual basis under which he could have been convicted of the original charges of second-degree murder with the use of a deadly weapon, or the lesser offense of voluntary manslaughter with the use of a deadly weapon, and burglary while in possession of a firearm. On this basis, White contended that his Alford plea was invalid and he should be permitted to withdraw it.

The essential facts proffered by the State to support the original charge of second-degree murder with the use of a deadly weapon against White were as follows: Chay Stevens was shot and killed by Willard Arledge, while Stevens and White were burglarizing the home of

⁵See Freese v. State, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

⁶See Gomes, 112 Nev. at 1481, 930 P.2d at 706; Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

Willard and Mary Arledge and/or attempting to rob Mr. Arledge. As such, the State contented that White was "responsible and liable" for Stevens' death.

This court held in Sheriff v. Hicks that a co-felon may not be prosecuted for the murder of another co-felon where the co-felon was killed by the victim resisting the felony.⁸ This court reasoned that "[t]he killing in such an instance is done, not in the perpetration of, or an attempt to perpetrate, a crime, but rather in an attempt to thwart the felony."⁹

Under these facts, and pursuant to Hicks, we conclude that the State failed to proffer a sufficient factual basis to support a charge against White of second-degree murder with the use of a deadly weapon. No evidence suggested that Stevens' death was the result of any act by White in furtherance of his crimes. Rather, like the co-felon in Hicks, Stevens was killed by the victim in an attempt to thwart the crimes. Although Hicks specifically concerned a prosecution for first-degree murder, the facts of that case are otherwise akin to the case at hand and this court's reasoning is similarly applicable. We also note that this court has rejected theories based on natural and probable consequences or

⁸89 Nev. 78, 81-82, 506 P.2d 766, 768 (1973) (recognizing that the theory of holding a co-felon criminally liable for the murder of another co-felon who is killed by the victim resisting the felony "has been widely rejected"); see, e.g., State v. Bonner, 411 S.E.2d 598, 600-02 (N.C. 1992).

⁹Hicks, 89 Nev. at 82, 506 P.2d at 768.

proximate cause that may also have been relied upon to support criminal liability against White under these facts.¹⁰

Moreover, and also contrary to the State's position, this court's holding in Sheriff v. Morris equally failed to support a charge of second-degree murder against White.¹¹ The immediate causal relationship required by Morris between White's conduct and Stevens' death was absent, as Mr. Arledge was an intervening source or agency.¹²

Because we conclude that the charge of second-degree murder with the use of a deadly weapon against White was unsupported by the factual proffer by the State, White's plea of guilty to one count of voluntary manslaughter with the use of a deadly weapon was essentially fictitious. There is no indication in the record that the State, the district court, or White understood that he was pleading guilty to what amounted to a fictitious charge.

Our preliminary review of White's appeal revealed arguable merit to this allegation in his petition. On December 3, 2003, this court issued an order directing the State to show cause why White's petition should not be remanded to the district court for an evidentiary hearing. Upon reviewing the State's response, we remain unconvinced that White's

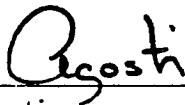
¹⁰Id.; see also Sharma v. State, 118 Nev. 648, 655, 56 P.3d 868, 872 (2002).


¹¹199 Nev. 109, 118-19, 659 P.2d 852, 859 (1983).

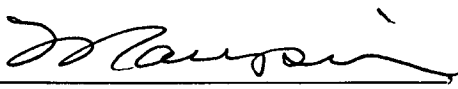
¹²Id.

Alford plea was knowingly entered.¹³ Therefore, we conclude that an evidentiary hearing is warranted on his petition to determine what advice, if any, White's trial counsel may have given him prior to the entry of his plea, and whether or not White should be permitted to withdraw it. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Agosti


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Kathy A. Hardcastle, Chief District Judge
Eighth Judicial District Court, Department 11
Laron Diontae White
Attorney General Brian Sandoval/Ely
Clark County District Attorney David J. Roger
Clark County Clerk

¹³See Tiger, 98 Nev. at 558, 654 P.2d at 1033; Lyons v. State, 105 Nev. 317, 323, 775 P.2d 219, 223 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 863, 59 P.3d 477, 480 (2002); see also Schertz v. State, 109 Nev. 377, 379, 849 P.2d 1058, 1060 (1993).