

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANDREW WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40429

MICHAEL ANDREW WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41172

FILED

JUN 07 2004

ORDER OF AFFIRMANCE

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

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.¹

Docket No. 40429

On August 23, 2001, the district court convicted appellant, pursuant to an Alford plea,² of one count of battery with the use of a deadly weapon causing substantial bodily harm in district court case number C175869. The district court sentenced appellant to serve a term of thirty-six to one hundred and twenty months in the Nevada State Prison. No direct appeal was taken.

On August 12, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The

¹See NRAP 3(b).

²North Carolina v. Alford, 400 U.S. 25 (1970).

State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On November 19, 2002, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was invalid due to the ineffective assistance of counsel. Specifically, appellant claimed that he was promised that another case, district court case number C177951, would be dismissed as a part of the plea negotiations in the instant case. He claimed that trial counsel should have objected when the State breached the plea agreement by presenting appellant with a guilty plea agreement that did not contain this term.³ He further claimed that his trial counsel was ineffective for failing to read the plea agreement, correct the terms of the negotiations and file an appeal on the ground that the plea agreement had been breached. He asserted that he did not want to withdraw the guilty plea in the instant case; rather, he sought specific performance—the dismissal of district court case number C177951.

The district court concluded that appellant's challenge was improperly brought in the instant case because of the nature of relief sought and because appellant expressly stated that he did not want to withdraw his guilty plea in the instant case. The district court further concluded that he should instead raise this challenge in district court case number C177951 and that appellant failed to demonstrate that his guilty

³He claimed that the State's actions violated his due process and equal protection rights. These claims are outside the scope of a habeas corpus petition challenging a conviction based upon a guilty plea. See NRS 34.810(1)(a). Our review of these claims is limited to appellant's claim that his trial counsel was ineffective in this regard.

plea was invalid and that his trial counsel was ineffective. Based upon our review of the record on appeal, we conclude that the district court did not err. The relief appellant sought is more properly pursued in district court case number C177951. Moreover, appellant's claims are not supported by the record on appeal. The written guilty plea agreement, which appellant signed, did not state that another district court case would be dismissed as a part of the negotiations. Rather, the record reveals that in exchange for his guilty plea to battery with the use of a deadly weapon causing substantial bodily harm, the State did not pursue the original charges of attempted murder with the use of a deadly weapon and robbery with the use of a deadly weapon.⁴ Dismissal of another case was not a term of the plea negotiations as set forth in the plea canvass. During the plea canvass, appellant affirmatively indicated that he was not made promises other than those in the negotiations set forth. Thus, we conclude that appellant failed to demonstrate that his guilty plea was invalid or that his counsel was ineffective.⁵ Accordingly, we affirm the order of the district court denying appellant's petition.

Docket No. 41172

The district court convicted appellant, pursuant to a guilty plea, of one count of attempted grand larceny auto in district court case number C177951.⁶ The district court sentenced appellant to serve a term

⁴The State retained the right to argue at sentencing.

⁵See Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

⁶The judgment of conviction was entered on October 27, 2003.

of twelve to forty-eight months in the Nevada State Prison. The district court imposed this sentence to run consecutively to the sentence imposed in district court case number C175869. No direct appeal was taken.

On August 12, 2002, appellant 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 appellant or to conduct an evidentiary hearing. On February 19, 2003, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was coerced because he was promised in district court case number C175869 that the instant case would be dismissed. Appellant claimed that his trial counsel was ineffective in advising him to enter a guilty plea under these circumstances and the district court should have conducted a more thorough examination of the record before accepting his guilty plea.⁷ These errors, he claimed, violated his equal protection and due process rights.

The district court concluded that appellant failed to demonstrate that his guilty plea was invalid and that his trial counsel was ineffective because his claim regarding the dismissal of the instant case was not supported by the record. We conclude that the district court did not err in denying appellant's petition. As discussed previously, the record in district court case number C175869 does not support appellant's claim


⁷As discussed previously, these claims are outside the scope of the instant petition. See NRS 34.810(1)(a). Our review of these claims is limited to appellant's claim that his trial counsel was ineffective in this regard.

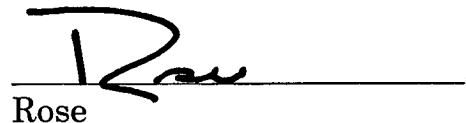
that the instant case was to be dismissed as a part of the plea negotiations. Thus, appellant failed to demonstrate that his guilty plea was invalid and that his trial counsel was ineffective.⁸ Accordingly, we affirm the order of the district court.

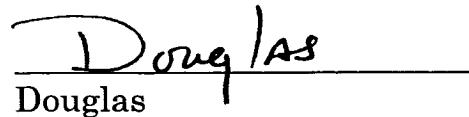
Conclusion

Having reviewed the records on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgments of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Rose

 _____, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Michael Andrew Woods
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸Kirksey, 112 Nev. 980, 923 P.2d 1102; Bryant, 102 Nev. 268, 721 P.2d 364.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).