

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY PAUL MORGAN,
Appellant,
vs.
THE STATE OF NEVADA AND
WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,
Respondents.

No. 41456

FILED

MAR 11 2004

JANEY WILSON
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Morgan was originally charged with nine felony counts, including battery, sexual assault and attempted murder, and one gross misdemeanor count of open or gross lewdness for punching and tearing off the clothing of a 17-year-old female victim in an attempt to sexually assault her and, thereafter, stabbing a male victim in the chest.

On September 6, 2001, Morgan entered a guilty plea to one count each of battery with a deadly weapon and attempted sexual assault. The district court sentenced Morgan to serve a prison term of 6 to 15 years for the battery count and a consecutive prison term of 8 to 20 years for the attempted sexual assault count. Morgan filed a direct appeal from the judgment of conviction. On March 5, 2002, this court granted Morgan's motion to voluntarily dismiss the appeal.¹

¹Morgan v. State, Docket No. 38776 (Order Dismissing Appeal, March 5, 2002).

On October 16, 2001, Morgan filed a proper person post-conviction petition for a writ of habeas corpus, and thereafter, filed a proper person supplement to the petition. The district court appointed counsel to represent Morgan, and counsel supplemented the petition. The State opposed the petition. After conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

In the petition, Morgan raised claims of ineffective assistance of counsel. In order 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 his counsel's performance fell below an objective standard of reasonableness.² Additionally, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial."³

Morgan first contends that his trial counsel was ineffective and his guilty plea was involuntary because Morgan pleaded guilty due to his trial counsel's failure to prepare for trial. In particular, Morgan alleges that his trial counsel coerced the guilty plea by failing to: (1) adequately communicate with him; (2) investigate any potential defenses; (3) file several pretrial motions; and (4) discover and secure the attendance of certain defense witnesses. We conclude that the district court did not err in rejecting Morgan's contentions.

²Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

³Hill, 474 U.S. at 59.

Morgan's claim that he was coerced into entering a guilty plea is belied by the record.⁴ In the signed guilty plea agreement, Morgan acknowledged that he was pleading guilty because he believed it was in his best interest and also acknowledged that he was not acting under duress or coercion. Additionally, trial counsel, Paul Drakulich, testified that he had extensive discussions with Morgan about the benefits and consequences of the guilty plea and that he did not pressure Morgan into entering a guilty plea. Finally, Drakulich testified that he was prepared for trial, explaining that he had reviewed the discovery in the case and discussed various defense theories with Morgan, including self-defense and the effect of Morgan's mental state on his culpability for the crimes. Accordingly, Morgan has failed to show that the district court's finding that Morgan's guilty plea was voluntary and that his trial counsel was not ineffective is not supported by substantial evidence or was clearly wrong.⁵

Morgan also contends that the district court erred in refusing to allow him to withdraw his guilty plea because he was actually innocent of the charge crimes. Specifically, Morgan attached a letter to the petition allegedly written and signed by the female victim recanting her prior testimony that Morgan attempted to sexually assault her. The district court rejected Morgan's claim of newly discovered evidence, finding that the female victim did not recant her prior testimony. We conclude that the district court did not err in denying Morgan's claim.

At the post-conviction hearing in this case, the female victim testified that she did not authorize or write the letter, and that her prior


⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


⁵See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


testimony that Morgan attempted to sexually assault her was true. Accordingly, Morgan has failed to show that the district court's finding that the victim did not recant her prior testimony was not supported by substantial evidence or was clearly wrong.

Having considered Morgan's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Rick Lawton
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk