

IN THE SUPREME COURT OF THE STATE OF NEVADA

LORENZO BLEDSOE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41856

FILED

DEC 21 2004

ORDER OF REVERSAL AND REMAND

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

This is an appeal from an order of the district court denying appellant Lorenzo Bledsoe's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On April 12, 2000, Bledsoe was convicted, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. The district court sentenced Bledsoe to serve two consecutive prison terms of 36-156 months for each of the two counts, with the sentences for the two counts to run concurrently. Bledsoe voluntarily consented to the dismissal of his direct appeal.<sup>1</sup>

On September 7, 2000, Bledsoe 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 Bledsoe. Nevertheless, without post-conviction counsel or Bledsoe's presence, the district court conducted

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<sup>1</sup>Bledsoe v. State, Docket No. 36079 (Order Dismissing Appeal, July 24, 2000).

a hearing on the merits of Bledsoe's claims. The district court received evidence and testimony from Bledsoe's former counsel regarding the merits of Bledsoe's claims, and on November 21, 2000, entered an order denying Bledsoe's petition. On appeal, this court reversed the district court's denial of Bledsoe's petition pursuant to Gebers v. State,<sup>2</sup> and remanded the case back to a different district court judge for an evidentiary hearing on the merits of the claims raised in Bledsoe's petition.<sup>3</sup> On remand, the district court appointed counsel to represent Bledsoe, and on June 27, 2003, conducted an evidentiary hearing. On August 19, 2003, the district court entered an order denying Bledsoe's petition, concluding that Bledsoe's counsel was not ineffective and that Bledsoe was mentally competent at the time he entered his guilty plea. The district court also denied Bledsoe's motion for rehearing. This timely appeal followed.

In his petition below, Bledsoe contended that he received ineffective assistance of counsel prior to the entry of his guilty plea. More specifically, Bledsoe claimed that he was not mentally competent at the time he entered his guilty plea, and therefore, his plea was not knowingly and intelligently entered. At the evidentiary hearing conducted after this

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<sup>2</sup>118 Nev. 500, 50 P.3d 1092 (2002) (holding that petitioner's statutory rights are violated when a district court conducts an evidentiary hearing on petitioner's claims when petitioner is neither present nor represented by post-conviction counsel).

<sup>3</sup>Bledsoe v. State, Docket No. 37075 (Order of Reversal and Remand, August 22, 2002).

court remanded the case, Bledsoe's former counsel, G. Brent Heggie, testified that had the law at the time allowed for an insanity defense, he would have asserted such an affirmative defense and recommended that Bledsoe plead not guilty by reason of insanity.<sup>4</sup> During closing argument, post-conviction counsel requested that Bledsoe be allowed to withdraw his guilty plea. On appeal, Bledsoe renews his request. We conclude that the district court erred in denying Bledsoe's petition.

The right to the effective assistance of counsel applies "when deciding whether to accept or reject a plea bargain."<sup>5</sup> 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 counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that there was a reasonable probability that the outcome would have been different.<sup>6</sup> A district court's

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<sup>4</sup>See 1995 Nev. Stat., ch. 637, § 5(3), at 2450 (abolishing the affirmative defense of "not guilty by reason of insanity"); but see Finger v. State, 117 Nev. 548, 575-76, 27 P.3d 66, 84 (2001), cert. denied, 534 U.S. 1127 (2002) ("[t]he Legislature may not abolish insanity as a complete defense to a criminal offense," therefore, the amended version of NRS 174.035(4), eliminating the plea of "not guilty by reason of insanity," was "unconstitutional and unenforceable"); 2003 Nev. Stat., ch. 284, § 4(4), at 1457-58 (once again providing for the affirmative defense of "not guilty by reason of insanity").

<sup>5</sup>See Larson v. State, 104 Nev. 691, 693 n.6, 766 P.2d 261, 262 n.6 (1988) (citing McMann v. Richardson, 397 U.S. 759 (1970)).

<sup>6</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

factual finding regarding a claim of ineffective assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.<sup>7</sup>

In the instant case, as noted above, Bledsoe's trial counsel stated that he would have advised Bledsoe to plead "not guilty by reason of insanity" had it not been prohibited. Instead, counsel advised Bledsoe to plead guilty, despite counsel's oft-stated belief that Bledsoe was not mentally competent at the time he committed his crimes. There is no indication in the record on appeal that counsel ever discussed with Bledsoe or pursued the possibility of either pleading "guilty but mentally ill" pursuant to former NRS 174.041, or going to trial with a "diminished capacity" defense. We conclude that counsel's performance in this regard was not objectively reasonable, and but for counsel's deficient performance, there existed a reasonable probability that the outcome of Bledsoe's case would have been different. Therefore, the order of the district court denying Bledsoe's petition must be reversed and the matter remanded to the district court in order to allow Bledsoe the opportunity to withdraw his guilty plea. We finally note that on remand, the State will not be restricted by any prior negotiations and may reinstate the original charges.<sup>8</sup>

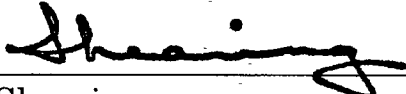
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<sup>7</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


<sup>8</sup>On June 23, 1997, Bledsoe was charged by way of a criminal information with four counts of burglary and eight counts of robbery with the use of a deadly weapon.

Accordingly, we

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

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

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

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jackie Glass, District Judge  
Christopher R. Oram  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk