

IN THE SUPREME COURT OF THE STATE OF NEVADA

NELSON GREGORY MALLOCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42252

FILED

JUN 25 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from the district court's order denying Malloch's motion for appointment of counsel and his post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On January 16, 2003, the district court convicted Malloch, pursuant to a guilty plea, of one count of coercion and one count of grand larceny. The district court sentenced Malloch to serve in the Nevada State Prison a term of 24 to 60 months for coercion and a consecutive term of 18 to 48 months for grand larceny. Both counts were ordered to run concurrently with a sentence Malloch received from a prior conviction. This court affirmed Malloch's conviction on direct appeal.¹

On July 10, 2003, Malloch filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Malloch also filed a motion for the appointment of counsel on that same date. The State opposed the petition and motion. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

¹Malloch v. State, Docket No. 40842 (Order of Affirmance, August 15, 2003).

represent Malloch or to conduct an evidentiary hearing. On October 6, 2003, the district court denied Malloch's petition. This appeal followed.²

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

Malloch specifically claimed that his trial counsel was ineffective for failing to file a motion regarding alleged false statements made by the victim. However, Malloch did not identify with particularity any statement by the victim he believed was untrue.⁵ Thus, we conclude Malloch failed to demonstrate that his counsel was ineffective in this regard.

Next, Malloch claimed that his counsel "badgered and frightened" him into signing his plea agreement. The record belies Malloch's contention. The signed plea agreement indicated that Malloch

²We conclude that the district court did not abuse its discretion in denying appellant's motion for the appointment of counsel. See NRS 34.750(1).

³Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁴Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).


⁵Malloch also asserted that he did not "have the information" to state other motions his counsel should have filed. He failed to articulate to any degree the nature of the motions he desired his counsel to file.


signed the agreement voluntarily, and that he was not acting under duress or coercion. Furthermore, during the plea canvass, Malloch stated that he read and understood the plea agreement. Thus, Malloch failed to demonstrate that his counsel was ineffective in this regard.⁶

Finally, Malloch claimed he did not waive his right to a speedy trial and the district court was provided false evidence at sentencing. These claims fall outside the scope of claims permissible in a habeas corpus petition challenging a conviction based upon a guilty plea.⁷

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Malloch is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁶Appellant further failed to demonstrate that his guilty plea was involuntary for the reasons discussed above. See State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

⁷See NRS 34.810(1)(a).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge
Nelson Gregory Malloch
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk