IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN WENDELL SMYTHE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42726

FILED

JUL 23 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On November 25, 2002, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years. No direct appeal was taken.

On September 25, 2003, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed three supplements to his petition in October 2003. 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 January 8, 2004, the district court denied his petition. This appeal followed.

In his petition, appellant contended that his guilty plea was involuntary due to ineffective assistance of counsel. 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. [1] A petitioner must demonstrate "'a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'"[2]

Appellant cited a host of reasons why his counsel was ineffective. However, the crux of appellant's argument is that his counsel inadequately investigated the charges, failed to mount a worthy defense, did not consider his claim of innocence, and coerced him into pleading guilty.

Our review of the record reveals that the district court did not err in denying appellant's petition. Appellant was thoroughly canvassed. The court inquired whether appellant had been able to communicate with his counsel regarding possible defenses, the elements of the offense, and what the State would have to prove if he went to trial. The court also elicited a factual admission from him and advised him of the constitutional rights he was waiving as a result of pleading guilty. Moreover, the plea agreement reflects that appellant discussed his case, including possible defenses and options, with his counsel, that he felt the plea was in his best interest, and that he was not acting under duress or threats. Thus, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to

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

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

trial. Accordingly, we conclude that the district court did not err in denying appellant's petition, and we affirm the order of the district court.

Having reviewed the record 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.[3] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Stephen Wendell Smythe
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[4]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.