

IN THE SUPREME COURT OF THE STATE OF NEVADA

SELWYN GRIMM,

Appellant,

vs.

WARDEN, WARM SPRINGS CORRECTIONAL
CENTER, ROBIN BATES,

Respondent.

No. 34827

FILED

JAN 05 2000

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

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. The district court convicted appellant on June 17, 1997, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen. See NRS 201.230. Appellant did not appeal. On April 28, 1998, he filed a timely proper person post-conviction petition for a writ of habeas corpus in which he challenged the effectiveness of his counsel. The district court appointed counsel, who filed supplemental points and authorities in support of the petition. The state opposed the petition. The district court held an evidentiary hearing and denied the petition. This appeal followed.

We have reviewed the record on appeal and for the reasons stated in the attached order of the district court, we

conclude that the district court properly denied appellant's petition. Accordingly, we

ORDER this appeal dismissed.

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk

FILED

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AUG -9 1999

AMY HARVEY, CLERK
By: *[Signature]* DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

SELWYN KENNETH GRIMM,

Petitioner,

v.

Case No. CR97P0331

ROBIN BATES, WARDEN,
WARM SPRINGS CORRECTIONAL CENTER,

Dept. No. 4

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

On June 4, and June 28, 1999, the parties, by and through their respective counsel, Joseph R. Plater, for the State of Nevada, and Karla Butko, for the petitioner, appeared before the court on petitioner's Petition for Writ of Habeas Corpus (Post-Conviction). After having heard and considered the evidence and testimony, the court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 16, 1997, petitioner was arrested and charged with lewdness with a minor and false imprisonment; shortly thereafter,

1 Deputy Public Defender Jennifer Lunt represented petitioner.

2 2. Ms. Lunt is an experienced attorney, who was competent to
3 represent petitioner.

4 3. A preliminary hearing was scheduled for February 6, 1997.
5 Before the hearing, Ms. Lunt reviewed the police reports, and
6 concluded that, even assuming the victim's allegations to be
7 true, there was some doubt as to whether petitioner could be
8 convicted beyond a reasonable doubt of the lewdness charge. Ms.
9 Lunt also believed that there was a basis to challenge police
10 officers' warrantless search of petitioner's apartment, which
11 revealed evidence that corroborated the victim's allegations.

12 4. Immediately before the preliminary hearing, the prosecutor
13 offered petitioner a plea bargain to plead to the lewdness charge
14 in exchange for the State dismissing the false imprisonment
15 charge and concurring with the sentencing recommendation of
16 Parole and Probation. Ms. Lunt related to petitioner the State's
17 offer and her legal conclusions about the strength of the case as
18 referenced above. Ms. Lunt also explained the elements of each
19 offense to petitioner.

20 5. Ms. Lunt told petitioner that it was his decision whether to
21 accept the plea offer or to go to trial. Ms. Lunt further told
22 petitioner that the case was "triable" and that she was willing
23 to go to trial with petitioner. Ms. Lunt told petitioner that
24 he should do what he thought was in his best interest; Ms. Lunt
25 did not discourage petitioner from proceeding to trial.

26 6. After Ms. Lunt and petitioner discussed the case,

1 petitioner decided to accept the State's offer to plead guilty to
2 the lewdness charge; accordingly, petitioner waived the
3 preliminary hearing. Petitioner accepted the plea bargain
4 knowingly, voluntarily, and intelligently, based on his desire to
5 resolve the charges against him as expeditiously as possible, and
6 to receive a possible sentence of probation. Pursuant to that
7 desire, petitioner pled guilty in this court according to the
8 negotiations.

9 7. The court finds that petitioner pled guilty in a knowing,
10 voluntary, and intelligent fashion. The court further finds that
11 Ms. Lunt adequately investigated the case up until the point
12 petitioner expressed his desire to plead guilty. The court also
13 concludes that petitioner's conduct with the victim could legally
14 constitute the crime of lewdness.

15 8. After petitioner pled guilty, Ms. Lunt did not pursue
16 possible defenses to the charges, such as a writ of habeas
17 corpus, or motions to suppress evidence or to compel the victim
18 to submit to an independent psychological examination. Instead,
19 Ms. Lunt focused her energies on sentencing issues in order to
20 argue for probation for petitioner. The court finds that this
21 was a reasonable strategy.

22 9. To prepare for sentencing, Ms. Lunt had petitioner evaluated
23 by Thomas Turner and Dr. Robert Hiller. When he pled guilty,
24 petitioner understood that there was no guarantee to any specific
25 sentence; he further understood that he could receive probation
26 only if he were certified by a psychologist or a psychiatrist

1 that he was not a menace to the health, safety or morals of
2 others. He understood that there was no guarantee that he would
3 be so certified.

4 10. Ms. Lunt did not present Dr. Hiller's evaluation of
5 petitioner at sentencing because Dr. Hiller could not credibly
6 tell the court that petitioner was not a threat or menace to the
7 health, welfare, or morals of the community. The court finds
8 that this was a reasonable tactic that Ms. Lunt used on behalf of
9 petitioner.

10 11. Robert Bell, Esq., represented petitioner at sentencing.
11 The court finds that Mr. Bell afforded petitioner effective
12 assistance of counsel at sentencing. The presentation of
13 additional witnesses, such as family members who may have
14 testified about petitioner's character or that petitioner had
15 family support, at sentencing would not have affected this
16 court's determination of petitioner's sentence.

17 12. Petitioner submits that Ms. Lunt violated the
18 attorney/client privilege between her and petitioner. The court
19 disagrees. Petitioner revealed confidential communications
20 between him and Ms. Lunt in a letter he mailed to the court. In
21 addition, petitioner suffered no prejudice from Ms. Lunt's
22 testimony about her client.

23 13. The court finds that Mr. Bell informed petitioner of his
24 right to appeal. Petitioner's testimony to the contrary is
25 rejected.

26 14. The court finds that any issue presented in the writ and the

1 supplemental writ, but not presented or argued at the evidentiary
2 hearing, is hereby waived and rejected.

3 CONCLUSIONS OF LAW

4 1. Ms. Lunt and Mr. Bell afforded petitioner effective
5 assistance of law, as that concept has been defined in Strickland
6 v. Washington, 466 U.S. 668 (1984), and its progeny.

7 2. Petitioner pled guilty with a full understanding of the
8 elements of the charges against him, his constitutional rights,
9 and the possible penalties he faced.

10 3. Petitioner freely, voluntarily, and intelligently entered his
11 guilty plea.

12 JUDGMENT

13 It is therefore the judgment and order of this court
14 that petitioner's Petition for Writ of Habeas Corpus (Post-
15 Conviction) is hereby denied.

16 DATED this 4 day of August, 1999.

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18 Conrad J. Steinheim
19 DISTRICT JUDGE
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