

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAPHAEL P. ROCCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54079

FILED

MAR 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition, filed on February 13, 2009, appellant claimed he received ineffective assistance of trial counsel. To prove 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 was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

shown, Strickland v. Washington, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel. Strickland 466 U.S. at 698; Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

First, appellant claimed that his trial counsel was ineffective because: counsel did not allow him to view pretrial discovery, did not explain the nature of the offense, failed to discuss defense strategy, failed to investigate witnesses, informed him he would be convicted by a jury, and told him he would receive the short end of possible sentences. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At the evidentiary hearing, appellant's trial counsel stated that he reviewed and discussed the evidence, the offense, and the waiver of rights with appellant. Further, candid advice about the possible outcome of trial is not evidence of a deficient performance. In addition, appellant was informed in the guilty plea agreement of the possible range of sentences. Also, considering the substantial evidence of appellant's guilt, appellant failed to demonstrate he would have refused to plead guilty and would have insisted on going to trial absent these alleged errors. The district court determined that appellant's trial counsel was not ineffective concerning these issues and we conclude that substantial evidence supports that determination.

Second, appellant claimed that his trial counsel was ineffective for failing to file a motion to suppress his statements to the police because the statements were made while under the influence of heroin. Appellant failed to demonstrate that his trial counsel's

performance was deficient or that he was prejudiced. Appellant did not allege and the record does not reveal that he informed his trial counsel about his alleged intoxication during the interview with police. If counsel was not made aware of appellant's intoxication, counsel cannot have reasonably been expected to investigate the possibility of suppressing appellant's statements due to intoxication. Further, appellant received a substantial benefit from his plea, as the charges were reduced from two counts of sexual assault and two counts of open and gross lewdness to one count of attempted sexual assault. Thus, appellant failed to demonstrate he would have refused to plead guilty and would have insisted on going to trial had his counsel sought to suppress his statements to the police. Therefore, the district court did not err in denying this claim.

Third, appellant claimed his trial counsel was ineffective for failing to disclose his relationship with a bail bonding company, for failing to prove that the victim was a liar, and due to a conflict of interest because he had represented the victim in the past.² Appellant failed to provide any factual support for these claims and there is no support for them in the record. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). Therefore, the district court did not err in denying these claims.

²Appellant also claimed that the public defender's office had a conflict of interest. The public defender's office withdrew following appellant's repeated attempts to seek alternate counsel and Frank Kocka was appointed following the withdrawal. Appellant failed to demonstrate he suffered prejudice from the brief time period he was represented by the public defender's office.

Fourth, appellant claimed that his trial counsel was ineffective for coercing him into entering an unintelligent and unknowing guilty plea. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. In the guilty plea agreement, appellant acknowledged that he was entering his plea freely and voluntarily. Further, at the evidentiary hearing, appellant's trial counsel testified that he explained all of the rights appellant was waiving by entering a guilty plea and stated that he informed appellant that the decision to enter a guilty plea was appellant's. The district court determined that counsel did not coerce appellant into pleading guilty and we conclude that substantial evidence supports that determination.

Fifth, appellant claimed that his trial counsel was ineffective for failing to file a direct appeal. Appellant failed to demonstrate that his trial counsel's performance was deficient. At the evidentiary hearing, counsel testified that appellant did not ask him to file a direct appeal. The district court concluded that counsel's testimony was credible. Substantial evidence supports the district court's conclusion and, therefore, the district court did not err in denying this claim.

Finally, we note the notice of appeal contains a threat from appellant, in which he stated that there would be repercussions from his continued imprisonment.³ The Director of the Department of Corrections shall determine what forfeiture of credits, if any, is warranted. The Director of the Department of Corrections shall conduct whatever prison disciplinary proceedings are deemed necessary.

³The notice of appeal containing the threat is attached to this order.

Having considered appellant's contentions and concluding that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Valerie Adair, District Judge
Raphael P. Rocco
Director Howard Skolnik, Department of Corrections
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

FILED

JUN 26 2009

Tracie K. Lindeman
CLERK OF COURT

1 RAPHAEL ROCCO #1020492

2 Defendant In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 DISTRICT COURT

6 CLARK COUNTY NEVADA Electronically Filed
7 Jun 30 2009 04:07 p.m.
8 Tracie K. Lindeman

8 RAPHAEL ROCCO

9 # 1020492

Case No.

C-219157

Dept.No.

21

Docket

10 -v-

11 THE STATE OF NEVADA

14 NOTICE OF APPEAL

15 Notice is hereby given that the

APPELLATE

RAPHAEL

16 Rocco

, by and through himself in proper person, does now appeal

17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court

19 I DONT THINK YOU WANT THE
20 REPERCUSSIONS, THAT ARE GONNA FOLLOW BY
21 KEEPING ME INCARCERATED, YOU HAVE

Dated this date,

6.24.09

2 weeks

23 Respectfully Submitted,

24 Raphael Rocco

25 In Proper Person

CERTIFICATE OF SERVICE BY MAILING

I, RAPHAEL ROCCO, hereby certify, pursuant to NRCP 5(b), that on this
day of June, 2009, I mailed a true and correct copy of the foregoing ""
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

DAVID ROGER
DISTRICT ATTORNEY
200 Lewis Ave
LAS VEGAS NV 89101

EDWARD A. FRIEDLAND
200 Lewis Ave 3rd Floor
LAS VEGAS NV 89155

FRANK KUCKA
1900 E BONAZZA
L.V. NV 89121

DATED: this 24 day of June, 2009.

Raphael Rocco

1020497

/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: