

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER DANIEL PETROSKY, SR.,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondent.

No. 54487

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingerson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On appeal, appellant argues that the district court erred by denying three of his claims of ineffective assistance of 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 of a different outcome. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Further, in order to demonstrate prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that there was 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 must be shown.

Strickland, 466 U.S. at 697. A petitioner is only entitled to an evidentiary hearing on claims supported by specific facts not belied by the record, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

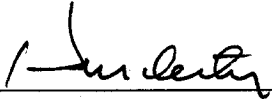
First, appellant claims that trial counsel was ineffective for failing to investigate that the victim's mother threatened to claim that appellant was molesting her children if he ever tried to kick her out of his home. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that he ever told trial counsel that the victim's mother threatened him and, therefore, that trial counsel was put on notice that he may want to pursue an investigation. Further, the victim's mother did not alert the authorities to the lewdness charges. Rather, the victim's aunt and his friend reported it to law enforcement. Appellant originally faced nine counts of lewdness with a minor and received a substantial benefit by pleading guilty to only two counts. Thus, appellant failed to demonstrate that there was a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

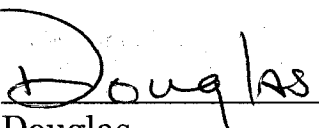
Second, appellant claims that the district court erred by denying his claim that trial counsel was ineffective for failing to present mitigating information at sentencing, specifically a psychosexual evaluation. Appellant failed to demonstrate that he was prejudiced by trial counsel's performance. Appellant failed to demonstrate that a psychosexual evaluation would have been favorable. The district court stated in its order below that a psychosexual evaluation would not have changed his sentencing decision because the decision was based on the nature of the offense and the fact that appellant had previously been convicted of a sexual offense against a child. Thus, appellant failed to

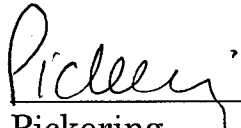
demonstrate a reasonable probability that the outcome of the sentencing hearing would have been different. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

Finally, appellant claims that the district court erred in denying his claim that trial counsel was ineffective for failing to inform appellant of his right to appeal. There is no constitutional requirement that counsel must inform a defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists "a direct appeal claim that has a reasonable likelihood of success." Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). Appellant failed to demonstrate that trial counsel was deficient because he failed to demonstrate that he requested trial counsel to file an appeal or that there were direct appeal claims that had a reasonable likelihood of success. Further, appellant was informed of his limited right to appeal in his guilty plea agreement. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
Merchant Law Firm, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk