

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE WALTER WARD,
Appellant,

vs.

WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DAVID
MILLIGAN,
Respondent.

DALE WALTER WARD,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 38435

FILED

AUG 15 2002

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

No. 38455

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court denying appellant Dale Walter Ward's post-conviction petitions for writs of habeas corpus.

On February 23, 1999, Ward was convicted, pursuant to an Alford¹ plea, of one count each of possession of a controlled substance and being an ex-felon in possession of a firearm in district court case no. CR96-1014. The district court sentenced Ward to serve consecutive prison terms of 12-34 months and 12-48 months; the sentences were suspended and Ward was placed on probation for an indeterminate period not to exceed 36 months. On September 14, 1999, Ward's probation was revoked and he

¹North Carolina v. Alford, 400 U.S. 25 (1970).

was ordered to serve his original sentence with credit for 194 days time served. Ward's appeal from the district court order revoking his probation was dismissed by this court.²

On September 14, 1999, Ward was convicted, pursuant to a guilty plea, of one count of possession of a controlled substance in district court case no. CR99-1291. The district court sentenced Ward to serve a prison term of 12-48 months, to be served consecutively to the sentence in district court case no. CR96-1014, and ordered him to pay restitution in the amount of \$637.77. Ward's direct appeal from the judgment of conviction was dismissed by this court.³

On November 5, 1999, Ward filed two proper person petitions for writs of habeas corpus in the district court. The district court appointed counsel to represent Ward in both cases, and a supplemental petition was filed. The district court conducted an evidentiary hearing, and on August 16, 2001, denied the petitions. These timely appeals followed.

In the petitions below, Ward presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed


²Ward v. State, Docket No. 34973 (Order Dismissing Appeal, April 12, 2000).


³Ward v. State, Docket No. 34958 (Order Dismissing Appeal, March 21, 2000).


on appeal.⁴ Ward has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Ward has not demonstrated that the district court erred as a matter of law.⁵

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young



_____, J.
Agosti


_____, J.
Leavitt

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

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁵See id.

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

* * *

DALE WARD,

Petitioner,

v.

DAVID MILLIGAN, WARDEN,
NORTHERN NEVADA CORRECTIONAL
CENTER,

Respondent.

Case No. CR96P1014
CR99P1291
Dept. No. 4

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This matter came before the court on Ward's Petition for Writ of Habeas Corpus (Post-Conviction). An evidentiary hearing has been conducted. The court, now being fully advised of the premises, denies the relief requested.

FINDINGS OF FACT

1. On March 15, 1996, Ward was arrested and charged with one count of trafficking in a controlled substance and several other felonies.

a. Following a preliminary hearing, Ward was bound

1 over for trial on all counts in Case No. CR96-1014.

2 b. Subsequently, following plea negotiations, Ward
3 entered a plea pursuant to North Carolina v. Alford,
4 400 U.S. 25 (1970)', to one count of possession of a
5 controlled substance and one count of being an ex-felon
6 in possession of a firearm.

7 c. At sentencing, Ward was placed on probation.

8 d. Ward was represented by Jerome Wright in Case No.
9 CR96-1014, but Wright's performance is not in issue
10 here.

11 2. On June 16, 1999, Ward was arrested and charged with one
12 count of trafficking in a controlled substance in Case No.
13 CR99-1291. Owing to his arrest, the Department of Parole and
14 Probation sought an order revoking Ward's probation in the 1996
15 case.

16 a. Following the arrest, Ward hired Robert Bruce
17 Lindsay to represent him both in Case No. CR99-1291 and
18 on the now pending probation revocation in Case No.
19 CR96-1014.

20 b. Given Lindsay's experience and training, he was
21 well qualified to represent Ward in these two cases.

22 3. Following a reasonably complete investigation of the facts
23 surrounding Case No. CR99-1291, Lindsay advised Ward to accept a
24 plea bargain which stipulated that, in exchange for Ward's plea
25 to possession of a controlled substance, the prosecution would
26 concur with the recommendation of the Department. Meanwhile, the

1 defense would be permitted to allow for probation in the 1999
2 case and for reinstatement on probation in the 1996 case.

3 a. Lindsay's strategy was objectively reasonable under
4 prevailing professional norms.

5 b. Ward agreed to the choice of strategies suggested
6 by Lindsay. Ward's testimony to the contrary is not
7 credible.

8 c. In advising Ward to accept the plea bargain,
9 Lindsay never guaranteed Ward any particular sentence.
10 Ward's testimony and that of his witness, Laura
11 Tinsley, to the contrary is not credible.

12 d. In addition, Lindsay never guaranteed expressly or
13 by implication that Ward would be reinstated on
14 probation. Ward's testimony and that of Laura Tinsley
15 to the contrary are not credible.

16 4. On August 5, 1999, Ward appeared in the district court and
17 entered his negotiated plea.

18 a. Prior to the entry of the plea, Ward and Lindsay
19 went over the guilty plea memorandum in detail, and
20 Ward understood its contents. Ward's testimony to the
21 contrary is not credible.

22 b. In the change of plea proceeding, Ward was
23 canvassed in due form, and the court finds that Ward
24 answered all of the questions put to him truthfully at
25 that time. To the extent that Ward's testimony in the
26 habeas proceeding draws the latter finding into

1 question, the court finds Ward's testimony unworthy of
2 belief.

3 5. On September 14, 1999, both of Ward's cases were called.

4 a. Prior to the hearing, Lindsay conducted a
5 reasonably complete investigation of all available
6 sentencing mitigating facts and evidence, as well as
7 legal and factual defenses to the requested probation
8 revocation, including all points relevant to the
9 support of reinstatement. Lindsay also received and
10 reviewed the presentence investigation report with
11 Ward. Ward's testimony to the contrary is not
12 credible.

13 b. In the sentencing/revocation hearing, Lindsay
14 called no witnesses, but presented considerable and
15 credible documentary evidence.

16 i. Lindsay's strategy was reasonable under
17 prevailing professional norms. To the extent
18 that Ward testified that he was unaware of
19 the strategy, or, in some way, disagreed with
20 it, his testimony is not credible.

21 ii. In the habeas proceeding, Ward presented
22 no evidence or testimony which created a
23 reasonable probability that the court's
24 sentencing/revocation decision would have
25 been different.

26 c. Lindsay's argument in the sentencing/revocation

1 proceeding was objectively reasonable under prevailing
2 professional norms, and Ward has failed to present any
3 credible evidence suggesting that a different argument
4 had a reasonable probability of persuading the court to
5 impose any other sentence or order for reinstatement on
6 probation.

7 6. Following the imposition of sentence and revocation of
8 probation, Ward filed a notice of appeal in pro per.

9 a. Although Ward filed the notice of appeal, Lindsay
10 testified credibly that Ward did not, either expressly
11 or by implication, give him any reason to believe that
12 he wanted to take an appeal. Ward's testimony to the
13 contrary is not credible.

14 b. After the notice of appeal was filed in both cases,
15 the Nevada Supreme Court entered an order requiring
16 Lindsay to take over the appeal and bring the case into
17 compliance with NRAP 3(c). Lindsay dutifully followed
18 the Court's order.

19 c. Subsequently, after a Fast Track Statement and Fast
20 Track Response were filed in both cases, the Nevada
21 Supreme Court entered orders dismissing the appeals in
22 each case.

23 i. On appeal from the order revoking Ward's
24 probation, CR96-1014, Supreme Court Case No.
25 34973, Lindsay argued that the district judge
26 erred in revoking Ward's probation.

1 aa. Lindsay's selection of issues was
2 objectively reasonable under prevailing
3 professional norms.

4 bb. Ward failed to identify any issue
5 which, had it been presented on appeal,
6 would have been meritorious or would
7 have created a reasonable probability of
8 reversal of the probation revocation
9 order.

10 ii. On appeal from the judgment of conviction in
11 Case No. CR99-1291, Supreme Court Case No. 34958,
12 Lindsay argued that Ward's plea was not entered
13 knowingly, voluntarily or intelligently, because
14 Ward was not adequately informed of the
15 consequences of his plea.

16 aa. While local attorneys usually do
17 not attack the validity of guilty pleas
18 on direct appeal, opting instead to
19 challenge the severity of sentence, the
20 latter issue is successfully argued in
21 only the rarest of cases. Accordingly,
22 Lindsay's failure to raise that issue
23 was not objectively unreasonable under
24 prevailing professional norms, since
25 counsel was not obliged to raise every
26 nonfrivolous issue.

1 bb. Ward failed to identify any issue
2 unreasonably omitted by Lindsay which, had it
3 been presented on appeal, would have created
4 a reasonable probability that the Nevada
5 Supreme Court would have vacated Ward's
6 sentence or otherwise remanded the case for
7 resentencing.

8 7. Ward has had a full and fair opportunity to plead and/or
9 litigate any and all claims in each case arising under both the
10 federal constitution and the state constitution of Nevada for the
11 laws of the state.

12 CONCLUSIONS OF LAW

13 1. Ward received the effective assistance of counsel in Case No.
14 CR96-1014 and Case No. CR99-1291, within the contemplation of
15 Hill v. Lockhart, 474 U.S. 52 (1985), and Strickland v.
16 Washington, 466 U.S. 668 (1984), and their local progeny.

17 2. Ward received the effective assistance of counsel on appeal
18 in both Case No. 34973 and Case No. 34958, within the
19 contemplation of Jones v. Barnes, 463 U.S. 745 (1983), Evitts v.
20 Lucey, 469 U.S. 387 (1985), and their local progeny.

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JUDGMENT

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

DATED this 14 day of August, 2001.

Connie J. Steinhilber
DISTRICT JUDGE