

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH E. BROOKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42876

FILED

AUG 17 2004

ORDER OF AFFIRMANCE

JAMES L. WELLS  
CLERK OF SUPREME COURT  
BY *J. Richards*  
DEPUTY CLERK

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

On August 14, 2002, the district court convicted Brooks, pursuant to an Alford plea,<sup>1</sup> of five counts of robbery with the use of a deadly weapon (Counts I-V) and one count of possession of a firearm by an ex-felon (Count VI).<sup>2</sup> The district court sentenced Brooks to serve ten consecutive terms of 2 to 5 years for Counts I-V and a concurrent 1 to 4 year term for Count VI—for a total of 20 to 50 years in the Nevada State Prison. No direct appeal was taken.

On August 12, 2003, Brooks filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750, the district court

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>The guilty pleas to the deadly weapon enhancements and the count of possession of a firearm by an ex-felon were entered pursuant to Alford. See id.

declined to appoint counsel to represent Brooks. After conducting an evidentiary hearing on Brooks' Lozada claim,<sup>3</sup> the district court denied the petition. This appeal followed.

In his petition, Brooks asserted that his guilty plea was not entered knowingly and voluntarily due to the ineffective assistance of counsel. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>4</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>5</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>6</sup> 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.<sup>7</sup> Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>8</sup> The court can dispose of a claim if the

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<sup>3</sup>See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>4</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

<sup>5</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

<sup>6</sup>State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 272, 721 P.2d at 368.

<sup>7</sup> See Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>8</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

petitioner makes an insufficient showing on either prong.<sup>9</sup> The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>10</sup>

First, Brooks claimed that his counsel was ineffective and his guilty plea was involuntary because his counsel failed to prepare for trial. In particular, Brooks alleged that his counsel provided ineffective assistance by failing to: (1) review discovery presented from the district attorney; (2) interview prosecution and defense witnesses; and (3) investigate a viable defense. We conclude that the district court did not err in denying these claims.

Brooks failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Brooks failed to demonstrate what information would have been discovered with further investigation that would have altered his decision to enter a guilty plea. Brooks received a significant benefit by entry of his plea. In exchange for pleading guilty to Counts I-VI, Brooks avoided fourteen charges of burglary while in possession of a firearm, four charges of attempted robbery with the use of a deadly weapon, five additional charges of robbery with the use of a deadly weapon, and twelve additional charges of possession of a firearm by an ex-felon. Brooks faced significantly more time if he went to trial and was convicted of all of the charged offenses. Brooks informed the district court during the plea canvass that entry of the plea was in his best interests. Accordingly, Brooks has failed to

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<sup>9</sup>See Strickland, 466 U.S. at 697

<sup>10</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

demonstrate that his counsel was ineffective or his plea was invalid in this regard.

Second, Brooks claimed that his counsel was ineffective and his guilty plea was involuntary because his counsel incorrectly informed him that the State would be seeking habitual criminal status. This claim is belied by the record.<sup>11</sup> On May 31, 2002, prior to the entry of the guilty plea agreement, the State filed a motion to amend the information to include notice of the State's intent to seek habitual criminal adjudication pursuant to NRS 207.010. Accordingly, the district court did not err in denying this claim.

Third, Brooks claimed that his counsel was ineffective and his guilty plea was involuntary because the State proffered an insufficient factual basis to support the Alford plea. This claim is also belied by the record.<sup>12</sup> During the plea canvass, the State presented numerous facts which, if proven true, would have been sufficient to convict Brooks of Counts I-VI. Further, as discussed above, Brooks indicated that the plea was in his best interests. Accordingly, the district court did not err in denying this claim.

Finally, Brooks claimed that his counsel was ineffective because his counsel failed to advise him on how to perfect an appeal and failed to file a direct appeal despite being requested to do so. The district court held an evidentiary hearing on these claims and determined that Brooks was not deprived of his right to a direct appeal. At the evidentiary hearing, Brooks' counsel testified that she reviewed the guilty plea

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<sup>11</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).


<sup>12</sup>Id.

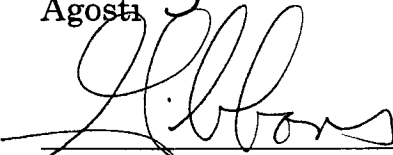
agreement with Brooks, including the subsection providing that Brooks has a limited right to appeal. Brooks' counsel further testified that she did not receive any correspondence from Brooks after sentencing. The district court's factual findings are supported by substantial evidence and are not clearly wrong. Accordingly, we conclude that counsel was not deficient and Brooks was not deprived of an appeal.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Brooks is not entitled to relief and that briefing and oral argument are unwarranted.<sup>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Valorie Vega, District Judge  
Keith E. Brooks  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>13</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).