

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN LARS HAMILTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43050

FILED

SEP 23 2004

ORDER OF AFFIRMANCE

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

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

On December 30, 2002, the district court convicted appellant, pursuant to a guilty plea, of possession of a credit or debit card without the cardholder's consent. The district court sentenced appellant to serve a term of 12 to 48 months in the Nevada State Prison. No direct appeal was taken.

On December 15, 2003, appellant 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 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 4, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was not entered knowingly and voluntarily due to ineffective assistance of counsel. A guilty plea is presumptively valid, and appellant carries the burden of

establishing that his plea was not entered knowingly and intelligently.¹ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.² This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³ In order 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.⁴ Additionally, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, [the petitioner] would not have pleaded guilty and would have insisted on going to trial."⁵

Appellant first contended that his counsel was ineffective for failing to inform him that he had a right to appeal and for failing to secure his consent to not file an appeal. "[T]here is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."⁶ Further, counsel "is not obliged to obtain consent not to file the appeal where the client does not express a desire to

¹See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

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

³Hubbard, 110 Nev. at 675, 877 P.2d at 521.

⁴See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

⁵Hill, 474 U.S. at 59.

⁶Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

challenge the proceedings."⁷ Appellant did not allege that he requested counsel to file a notice of appeal and counsel failed to do so. Thus, appellant failed to demonstrate that his counsel's performance was unreasonable or that he was prejudiced.

Next, appellant contended that his counsel was ineffective and his plea was involuntary because his counsel advised him to plead guilty even though the evidence was insufficient to convict him of the crime. Appellant specifically argued that he never owned or possessed any stolen property and that, but for counsel's advice, he would have insisted on going to trial.


Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant did not plead guilty to and was not convicted of possession of stolen property. Appellant has failed to demonstrate how the failure to own or possess stolen property would have altered his decision to enter a guilty plea. Further, appellant received a significant benefit by entry of his plea. In exchange for pleading guilty to one count of possession of a credit or debit card without the cardholder's consent, appellant avoided twenty-seven additional charges of the same offense. Appellant faced significantly more time if he went to trial and was convicted of all of the charged offenses. Appellant informed the district court during the plea canvas that he was guilty of the charge and that he believed entering the plea was in his best interests. Thus, appellant failed to demonstrate that his plea was invalid in this regard.


⁷Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Steven Lars Hamilton
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).