

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER CYR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43201

FILED

OCT 07 2004

ORDER OF AFFIRMANCE

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

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

On December 17, 2002, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of eight to twenty years in the Nevada State Prison. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.¹

On December 2, 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 April 23, 2004, the district court denied the petition. This appeal followed.

¹Cyr v. State, Docket No. 41003 (Order Dismissing Appeal, April 9, 2003).

In his petition, appellant claimed that his trial counsel was ineffective. 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.² 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.³ It is the petitioner's burden to demonstrate that his guilty plea was not entered knowingly and voluntarily.⁴

First, appellant claimed that his counsel was ineffective because counsel coerced appellant's guilty plea. Appellant claimed that his counsel informed appellant that if he pleaded guilty to attempted murder with the use of a deadly weapon that he would not be charged with murder if the victim died. However, when the victim died, appellant was charged with murder. Appellant claimed that he only pled guilty to avoid going to court on the murder count. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant gained a substantial benefit by entry of his guilty plea. Although appellant was charged with murder, the charge of murder was ultimately dismissed. Thus, appellant avoided a potential murder conviction by pleading guilty to attempted murder prior to the victim's

²See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

³See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁴See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

death. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel failed to aid him in filing a direct appeal, and consequently, he filed an untimely notice of appeal in proper person. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant did not allege, nor does it appear, that he requested his trial counsel to file a notice of appeal on his behalf.⁵ Appellant was informed of his limited right to appeal in the written guilty plea agreement.⁶ Thus, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his counsel was ineffective for informing him that he would receive two consecutive sentences of four to ten years, when in fact he received two consecutive sentences of eight to twenty years. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. The written guilty plea agreement informed appellant that he could potentially receive a sentence of two to twenty years for the primary offense and an equal and consecutive term for the deadly weapon enhancement. Appellant indicated during the plea canvass that he did not have any questions about the plea agreement. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.⁷ Therefore, we conclude that the district court did not err in denying this claim.

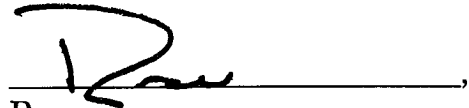
⁵See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).


⁶See id.

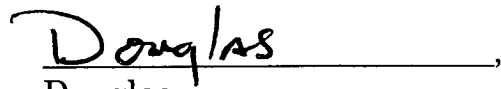
⁷See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

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.
Rose

 _____, J.
Maupin

 _____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Christopher Cyr
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).