IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHEY LAVELL ANDREW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43202

FILED

OCT 0 8 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Jackie Glass, Judge.

On January 15, 2003, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a minor under the age of fourteen and two counts of sexual assault. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years and one concurrent term of life with the possibility of parole after ten years. No direct appeal was taken.

On December 22, 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 9, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial counsel was ineffective and that this rendered his guilty plea invalid. 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. 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.[1] It is the petitioner's burden to demonstrate that his guilty plea was entered involuntarily and unknowingly.[2]

First, appellant claimed that his counsel was ineffective for leading him to believe that he would receive concurrent sentences. He claimed that this led his guilty plea to be entered involuntarily and unknowingly. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate that his trial counsel was ineffective or that his plea was invalid. The written plea agreement set forth that the parties stipulated that appellant would receive four life sentences with parole eligibility after ten years and that the parties agreed to retain the right to argue at

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

[2]Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

sentencing for concurrent or consecutive time. The written guilty plea agreement further set forth that the sentencing judge had the discretion to order the sentences be served concurrently or consecutively and that the agreement was being entered voluntarily without any promise of leniency not already set forth in the plea agreement. The district court personally canvassed appellant about the possibility that the sentences could be run consecutively. Appellant affirmatively indicated he understood that it was within the discretion of the district court to run the sentences concurrently or consecutively. Finally, appellant received a substantial benefit by entry of his guilty plea because he faced a harsher sentence if he went to trial on the original twenty-five sexually-related offenses. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[3] Thus, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his trial counsel was ineffective for failing to use letters written by the victim. Appellant failed to provide sufficient facts in support of this allegation.[4] Appellant failed to describe the content of the letters or otherwise indicate how the letters would have made a difference in the proceedings. Thus, we conclude that that the district court did not err in denying this claim.

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

[4]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Finally, it appears that appellant claimed that his trial counsel was ineffective for failing to inform him of the right to a direct appeal. We conclude that this claim lacks merit. The record on appeal reveals that appellant was advised of his limited right to appeal in the written guilty plea agreement. Specifically, appellant was advised that by entry of his plea he waived his "right to appeal the conviction . . . unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings . . . ." Thus, appellant's contention that he was not advised of his limited right to appeal is belied by the record on appeal.[5] Moreover, there is no constitutional requirement that counsel must always inform the 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.[6] Appellant does not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, appellant failed to demonstrate that trial counsel was ineffective in this regard.

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

[6]See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

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.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[8]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

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[7]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

[8]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
Richey Lavell Andrew
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk