IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE F. ORMOND A/K/A WILLIE F. ORMOND, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43280

FILED

NOV 19 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 appellant Willie Ormond's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On August 1, 2001, the district court convicted Ormond, pursuant to a guilty plea, of one count each of burglary and grand larceny. The district court adjudicated Ormond a habitual criminal and sentenced him to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed Ormond's judgment of conviction and sentence on appeal.[1] The remittitur issued on August 19, 2003.

On February 10, 2004, Ormond 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 Ormond or to

[1]Ormond v. State, Docket No. 38390 (Order of Affirmance, July 22, 2003).

conduct an evidentiary hearing. On June 23, 2004, the district court denied Ormond's petition. This appeal followed.

In his petition, Ormond argued that his guilty plea was not knowingly entered. A guilty plea is presumptively valid, and Ormond carries the burden of establishing that his plea was not entered knowingly and intelligently.[2] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[3] We will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[4]

First, Ormond claimed that his guilty plea was unknowingly entered because the guilty plea agreement did not recite the maximum sentence he could receive if he were adjudicated a habitual criminal. We conclude that Ormond failed to demonstrate that, under the totality of the circumstances, he was not aware of the consequences of his guilty plea. The written guilty plea agreement—which Ormond acknowledged having read, understood, and signed—provided that, "[t]he State has agreed to retain the right to argue at rendition of sentence including for a large habitual criminal enhancement." During the oral plea canvass, Ormond's trial counsel recited the possible sentence Ormond would face pursuant to the agreement, and specifically stated that, "[l]arge habitual criminal [enhancement] carries the potentiality of a life sentence." Further,

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

[3]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

[4]Hubbard, 110 Nev. at 675, 877 P.2d at 521.

Ormond acknowledged that his attorney had discussed with him the possible sentence, and informed the district court that he had no questions about the negotiations. For these reasons, Ormond failed to demonstrate that his guilty plea was unknowingly entered, and the district court did not err in denying him relief on this claim.[5]

Second, Ormond argued that his guilty plea was not knowingly entered because he believed the district court would consider sentencing him to an in-patient drug rehabilitation program if he pleaded guilty. The written guilty plea agreement provided that Ormond had not been promised any particular sentence by anyone. Ormond was additionally informed during the plea canvass that the matter of sentencing was within the sole discretion of the district court. We note that Ormond's trial counsel argued for placement in a drug rehabilitation program at sentencing, but the district court declined to impose such a sentence. A defendant's mere subjective belief about a potential sentence is insufficient to invalidate a guilty plea.[6] Consequently, Ormond failed to demonstrate that his guilty plea was unknowingly entered.

Next, Ormond contended that his trial counsel was ineffective.[7] To state a claim of ineffective assistance of trial counsel

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[5]Additionally, Ormond argued that the possibility of habitual criminal enhancement was not a term of the guilty plea agreement and the district court therefore sentenced him to a prison term that was in excess of that contemplated by the guilty plea agreement. For the reasons stated above, however, this claim is entirely meritless.

[6]Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

[7]To the extent that Ormond raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they are waived. See Franklin v. State, 110 Nev. 750, 752,

continued on next page . . .

sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.[8] A petitioner must further establish "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[9] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[10]

Ormond claimed that his trial counsel was ineffective for failing to argue at sentencing for placement in an in-patient drug rehabilitation program. However, a review of the record reveals that Ormond's trial counsel made such an argument. Thus, Ormond's claim is belied by the record,[11] and the district court did not err in denying him relief on this claim.[12]

. . . continued
877 P.2d 1058, 1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

[9]Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

[10]Strickland, 466 U.S. at 697.

[11]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[12]Ormond also argued that his trial counsel was ineffective for failing to inform the sentencing court that a previous judge had agreed to consider a drug rehabilitation program. Ormond did not demonstrate that the outcome of his sentencing hearing would have been different if his counsel had done so; he therefore failed to establish that his counsel was ineffective.

Ormond additionally raised several claims of ineffective assistance of appellate counsel. To establish ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.[13] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."[14] Appellate counsel is not required to raise every non-frivolous issue on appeal.[15]

First, Ormond contended that his appellate counsel was ineffective for failing to argue that his habitual criminal adjudication was improper. Specifically, Ormond claimed that the State failed to prove beyond a reasonable doubt that Ormond was the person who committed the prior offenses. We conclude that Ormond is not entitled to relief on this claim. Prior to the imposition of Ormond's sentence, the State provided the district court with certified copies of Ormond's previous felony convictions.[16] Ormond did not dispute these convictions at

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[13]See Strickland, 466 U.S. 668; Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

[14]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

[15]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[16]See NRS 207.016(5) (providing that "a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony"); McAnulty v. State, 108 Nev. 179, 181, 826 P.2d 567, 569 (1992) overruled on other grounds by Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003).

sentencing;[17] nor did he specifically argue in the instant petition that he was not the person named in the certified judgments of conviction. Because this claim did not have a reasonable probability of success on appeal, Ormond did not establish that his appellate counsel was deficient.

Second, Ormond claimed that his appellate counsel was ineffective for failing to argue that the State improperly notified him of its intent to seek habitual criminal treatment. Specifically, Ormond contended that the State did not include a count of habitual criminality in the information; instead, the State included a notice of its intent to seek habitual criminal adjudication in the information.[18] We conclude that this claim is without merit. A habitual criminal allegation is included in a charging document "merely to provide notice to the defendant that the state is seeking enhancement of penalty."[19] The record reveals that Ormond was provided with adequate notice of the State's intent to seek habitual criminal adjudication. The State's failure to label its notice of habitual criminality as a "count" does not warrant relief. Consequently, Ormond failed to demonstrate that an appeal of this issue had a reasonable likelihood of success.

Lastly, Ormond alleged that his appellate counsel was ineffective for failing to argue that the trial court neglected to make a finding that it was just and proper to adjudicate him a habitual criminal. On direct appeal, however, this court rejected Ormond's argument that the

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[17]We also note that in an earlier proceeding, Ormond informed the district court that he had five prior felony convictions.

[18]See NRS 207.010(2).

[19]Parkerson v. State, 100 Nev. 222, 224, 678 P.2d 1155, 1156 (1984).

district court abused its discretion in adjudicating him a habitual criminal. The doctrine of the law of the case prevents further litigation of this issue and "cannot be avoided by a more detailed and precisely focused argument."[20] Thus, the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Ormond is not entitled to relief and that briefing and oral argument are unwarranted.[21] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Shearing

_____, J.
Becker

_____, J.
Agosti

cc: Hon. Michelle Leavitt, District Judge
Willie F. Ormond
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[20]Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975)

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