

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEY HUGHES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43500

FILED

APR 05 2006

ORDER OF AFFIRMANCE

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

This is an 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; Joseph T. Bonaventure, Judge.

Appellant Joey Hughes entered a plea of nolo contendere to two counts of elder exploitation on February 14, 2002.¹ Hughes filed her habeas petition on January 30, 2004. An evidentiary hearing on the petition was held and all of Hughes claims were denied. Hughes now appeals that decision contending four errors on appeal.

First, Hughes contends the district court erred at sentencing when it failed to take into account her diagnosis of breast cancer. Hughes

¹See North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

claim is procedurally barred and is inappropriate in a post-conviction writ of habeas corpus. NRS 34.810(1)(a) requires dismissal of a petition upon a plea of guilty that is not based on an allegation that the plea was involuntary or unknowingly entered.

Second, Hughes contends counsel was ineffective for its failure to make the court aware of her medical condition. To state a claim of ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's performance, the outcome of the proceedings would have been different.² Hughes claims this failure to inform the court of both her condition and the exception in NRS 176A.430(4) prevented her from receiving a probationary sentence. Hughes claims her medical condition constituted an "economic hardship" that should not have prevented her from a probationary sentence. Hughes claim that the court was not aware is belied by the record.³ The district court was in fact aware of Hughes medical condition.

Third, Hughes claims her counsel was ineffective for failing to fully inform her of the consequences of her plea and her plea was therefore

²Strickland v. Washington, 466 U.S. 668 (1984).

³Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

invalid. A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.⁴ Hughes fails to refer to anything specific to substantiate her claim, therefore, she has not met her burden of proof.

Finally, Hughes asserts the district court erred when it found her plea was entered knowingly, voluntarily, and intelligently. In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁵ Hughes was canvassed regarding her plea. Hughes explained to the court that she discussed her plea and that she understood the consequences of her plea. Further, Hughes again fails to specifically indicate why her plea was not valid, other than to say she expected probation. The "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing."⁶ Moreover, Hughes has not shown that failure to allow her to withdraw her plea will result in a "manifest

⁴See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁵State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

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

injustice".⁷ Having considered Hughes' contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Yampolsky, Ltd.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁷See NRS 176.165.