IN THE SUPREME COURT OF THE STATE OF NEVADA

CEDRIC D. FLEMONS A/K/A CEDRICK DEMONTRE FLEMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43516

FILED

OCT 21 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 Cedric Flemons' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On November 26, 2002, the district court convicted Flemons, pursuant to a guilty plea, of first-degree murder and robbery with the use of a deadly weapon. The district court sentenced Flemons to serve a term of life in the Nevada State Prison with the possibility of parole for the murder count, and two terms of 72 to 180 months for the robbery count. All sentences were imposed to run consecutively. This court affirmed Flemons' judgment of conviction and sentence on appeal.[1] The remittitur issued on September 9, 2003.

On March 11, 2004, Flemons 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 Flemons or to

[1]Flemons v. State, Docket No. 40714 (Order of Affirmance, August 13, 2003).

conduct an evidentiary hearing. On July 8, 2004, the district court denied Flemons' petition. This appeal followed.

In his petition, Flemons claimed that his guilty plea was not knowingly and voluntarily entered. A guilty plea is presumptively valid, and Flemons 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, Flemons argued that his guilty plea was not knowingly entered because he did not know the elements of the charges to which he was pleading guilty. We conclude that this claim is without merit. The amended indictment, which was attached to the written guilty plea agreement, provided the elements of first-degree murder and robbery with the use of a deadly weapon. During the plea canvass, Flemons acknowledged that he read, understood, and signed the plea agreement. Further, Flemons answered affirmatively when asked whether his counsel had gone over the plea agreement with him thoroughly. Finally, the district court provided a factual basis for Flemons' plea of guilty to first-degree murder and robbery with the use of a deadly weapon; Flemons acknowledged that the factual basis was correct. For these reasons, Flemons did not establish that under the totality of the circumstances, his

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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.

guilty plea was unknowingly entered. Consequently, the district court did not err in denying him relief on this claim.

Second, Flemons contended that his guilty plea was not knowingly entered because he believed the district court was required to sentence him to consecutive terms of two to fifteen years in the Nevada State Prison for robbery with the use of a deadly weapon. Instead, the district court sentenced him to consecutive terms of six to fifteen years. We conclude that Flemons failed to demonstrate that under the totality of the circumstances, he was not aware of the consequences of his guilty plea. The guilty plea agreement provided that Flemons would be sentenced to "a minimum term of not less than TWO (2) years and a maximum term of not more than FIFTEEN (15) years plus an equal and consecutive term" for the crime of robbery with the use of a deadly weapon. As stated previously, Flemons acknowledged having read, understood, and signed the guilty plea agreement, and his attorney stated that he explained the terms of the agreement to Flemons. Contrary to Flemons' contention, his sentence did not exceed that contemplated by the guilty plea agreement. Flemons therefore failed to establish that his guilty plea was unknowingly entered, and we affirm the order of the district court with respect to this claim.

Flemons next claimed that his trial counsel was ineffective. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.[5] A petitioner must further establish "a reasonable probability that, but for

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

counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."[6] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[7]

First, Flemons contended that his trial counsel was ineffective for failing to investigate his defense to the charge of robbery with the use of a deadly weapon. Flemons contended that the victim brought the video game system to Flemons' house prior to the murder so Flemons' siblings could play video games. Flemons contended that his mother would have testified to this fact during trial. We conclude that Flemons failed to demonstrate that his counsel was ineffective with respect to this issue. Flemons admitted to police that he took the video game system from the victim's house after he was killed because Flemons was concerned his fingerprints were on it. Further, at his sentencing hearing, Flemons admitted taking the video game system from the victim's house after he was killed. Therefore, Flemons did not establish that his trial counsel acted unreasonably in failing to investigate this defense. As such, the district court did not err in denying Flemons relief on this claim.

Next, Flemons alleged that his trial counsel was ineffective for failing to investigate his defense to first-degree murder. Flemons contended that he informed his counsel that he and the victim were having an argument during which the victim pulled out a gun and fired two shots at Flemons; the bullets missed him, but lodged in the wall. Flemons claimed that after continuing to struggle, he accidentally shot the victim. We conclude that this claim is similarly without merit. The record

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

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

reveals that throughout his dealing with police and while in court, Flemons maintained that he shot the victim in self-defense. However, Flemons never stated that the victim attempted to shoot him first. He therefore failed to demonstrate that his counsel acted unreasonably in failing to investigate his claim that the victim attempted to shoot him. We further note that the grand jury indicted Flemons on first-degree murder with the use of a deadly weapon, and he received a substantial benefit in avoiding the deadly weapon enhancement by pleading guilty. Consequently, 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 Flemons is not entitled to relief and that briefing and oral argument are unwarranted.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Stewart L. Bell, District Judge
Cedric D. Flemons
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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