IN THE SUPREME COURT OF THE STATE OF NEVADA

ALINA KNOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43641

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is a proper person appeal from an order of the district court denying appellant Alina Knox's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; David A. Huff, Judge.

On March 28, 2003, the district court convicted Knox, pursuant to a guilty plea, of six counts of uttering a forged instrument, thirty-two counts of grand larceny, and thirty-one counts of obtaining or possessing a credit or debit card without cardholder's consent. The district court sentenced Knox to serve concurrent terms of eighteen to forty-eight months in the Nevada State Prison for the uttering a forged instrument counts; concurrent terms of eighteen to forty-eight months for the grand larceny counts; and concurrent terms of eighteen to forty-eight months for the possessing a credit or debit card without consent counts. The sentences for grand larceny and possessing a credit or debit card without consent were imposed to run concurrently with each other and consecutive

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to the sentence for uttering a forged instrument. The district court suspended Knox's sentences for grand larceny and possessing a credit or debit card without consent and placed her on probation for a period not to exceed five years. Knox did not file a direct appeal.

On March 22, 2004, Knox filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Knox filed a reply. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent Knox. The district court scheduled a hearing on the petition. On May 24, 2004, Knox filed a motion to waiver her appearance at the hearing. On June 29, 2004, the district court denied Knox's petition. This appeal followed.

In her petition, Knox alleged that her guilty plea was unknowingly and involuntarily entered because she was not able to understand the elements of the crime or the consequences of her plea and was incompetent to plead guilty. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[1] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a

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

clear abuse of discretion.[2] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[3]

Knox failed to demonstrate that under the totality of the circumstances her plea was not knowingly and voluntarily entered. The record on appeal reveals that Knox actively participated with the investigators and informed them of the crimes she committed. At the plea canvass, Knox stated that she "used credit cards without the knowledge of others." Further, in the written plea agreement, Knox acknowledged that entering the plea was in her best interest, and she indicated that she was signing the plea voluntarily. Finally, there is nothing in the record to indicate that Knox was not competent to enter into the guilty plea.[4] Knox was coherent and appropriately answered all questions presented to her at the plea canvass. Accordingly, we conclude the district court did not err in denying this claim.

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

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

[4]See NRS 178.400(2) (providing that a person is incompetent if the person is not sufficient mentally to understand the criminal charges against him and, because of the insufficiency, is not able to aid or assist counsel in the defense at trial or against pronouncement of the judgment); Godinez v. Moran, 509 U.S. 389 (1993) (the level of competency required to enter a guilty plea is the same as that to stand trial).

Knox also claimed that she was subjected to prejudicial pretrial publicity and prosecutorial misconduct in a hostile courtroom. This claim is outside the narrow scope of claims permissible in a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.[5] Accordingly, the district court did not err in denying this claim.

Knox also raised several claims of ineffective assistance of counsel. 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.[6] 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."[7] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[8]

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[5]See NRS 34.810(1)(a) (providing that the court shall dismiss a post-conviction habeas petition when the conviction is the result of a guilty plea and the petition does not raise a claim that the plea was entered without the effective assistance of counsel, or that the plea was entered unknowingly or involuntarily).

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

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

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

First, Knox alleged that her trial counsel was ineffective for failing to have her evaluated for competency. Specifically, Knox stated that she was not competent to enter a guilty plea and her counsel should have presented this to the district court. In support of this claim, Knox relies on a statement from her therapist, Dr. Abbott.

Knox failed to demonstrate that her counsel was deficient or that she was prejudiced by her counsel's actions. Knox failed to demonstrate that she was incapable of making an intelligent decision at the time she entered her plea, or that she was unable to understand the nature and consequences of her plea.[9] Dr. Abbott's letter does not support Knox's claim that she was not competent to enter into a guilty plea. Accordingly, we conclude the district court did not err in denying this claim.

Second, Knox alleged that her trial counsel was ineffective for failing to advise her of the possible sentence she could receive, and for failing to explain what it meant when the State retained the right to argue at sentencing. This claim is belied by the record.[10] The written guilty plea agreement correctly informed Knox of the potential penalty and informed Knox that the State retained the right to argue at sentencing. Further, during the plea canvass, Knox was correctly informed of the potential

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[9]See NRS 178.400(2).

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

penalty, that the sentences could be either concurrent or consecutive and that sentencing matters were solely up to the court. Knox failed to demonstrate that her counsel was deficient in this regard. Accordingly, we conclude that the district court did not err in denying this claim.

Third, Knox alleged that her trial counsel was ineffective for failing to review any defense options with her. Knox failed to demonstrate that her counsel was deficient in this regard. This claim is belied by the record.[11] The guilty plea agreement, which Knox stated she signed, read and understood, states that she "discussed with [her] attorney any possible defenses, defense strategies and circumstances that might be in [her] favor." Further, by pleading guilty, Knox waived the right to challenge events preceding the entry of the plea.[12] Accordingly, we conclude the district court did not err in denying this claim.

Fourth, Knox alleged that her counsel was ineffective for failing to inform her of her appellate rights. This claim is belied by the record.[13] The written plea agreement informed Knox of the limited scope of her right to appeal.[14] Knox failed to demonstrate that her counsel was

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[11]Id.

[12]Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

[13]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

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

deficient in this regard. Accordingly, we conclude the district court did not err in denying this claim.

Fifth, Knox asserted that her trial counsel was ineffective for failing to secure a written plea agreement prior to permitting her to speak with the State's investigators. Specifically, Knox claimed that her trial counsel informed her that if she cooperated with investigators, she would be able to plead guilty to only six felony counts, and the State would dismiss the remaining counts and recommend probation. Knox alleged that she relied on her counsel's representations concerning this oral plea agreement and provided the State's investigators with inculpatory information. However, no such plea agreement was ever reached, and Knox contended that she was compelled to plead guilty to all sixty-nine charged counts, with no concessions by the State, due to the incriminating information she provided the State's investigators.

Because our preliminary review of this appeal revealed that the district court may have erroneously denied Knox's petition without first conducting an evidentiary hearing, on May 24, 2005, this court entered an order directing the State to show cause why this appeal should not be remanded to the district court for an evidentiary hearing on this issue. In response, the State argues that the district court ordered an evidentiary hearing, but Knox filed a "Motion to Waive Appearance and Proceed Under Submission," thereby waiving her right to an evidentiary hearing. The State argues that the district court "should not be required to hold evidentiary hearings for litigants who have expressly asked that

the evidentiary hearing not be held and have indicated that they will not appear if the evidentiary hearing were to be held."

Although Knox filed a motion to waive her appearance and have the matter proceed under submission, it is not clear that Knox was aware that the scheduled hearing was an evidentiary hearing or that she intended to waive her right to the evidentiary hearing. The order setting the hearing does not state that the scheduled hearing was an evidentiary hearing. In her motion, Knox informed the district court that she did not wish to appear at the hearing because leaving the Jean Conservation Camp to appear at the hearing would result in her forfeiting her place in educational, vocational and mental health courses, and the loss of good time/work time credits. Knox further stated that if the court "finds sufficient cause to order an Evidentiary Hearing, the Petitioner submits that she will be prepared to appear." Additionally, in her reply brief, which was filed after the motion was filed, Knox twice referenced an evidentiary hearing. Based on the foregoing, it is not clear that Knox was aware that by waiving the hearing set for June 22, 2004, she was waiving an evidentiary hearing and her right to present evidence in support of her petition.

Knox was entitled to an evidentiary hearing on the issue of whether trial counsel failed to secure a written plea agreement prior to permitting her to speak with the State's investigators because it appears

that her claim is not belied by the record, and may, if true, entitle her to relief.[15] Because it is not clear that the hearing scheduled for June 22, 2004, was an evidentiary hearing, and it is not clear that Knox knowingly waived an evidentiary hearing, we conclude that the district court erred by not conducting an evidentiary hearing on this issue. Accordingly, we remand this appeal for an evidentiary hearing on the issue of whether Knox's trial counsel made such a representation to her, and if so, whether she relied on her counsel's advice when providing inculpatory information to the State, thereby compelling her to plead guilty to all sixty-nine charged offenses.[16]

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Knox is entitled only to the relief provided herein, and that briefing and oral argument are unwarranted.[17] Accordingly, we

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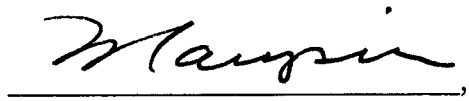
[15]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

[16]To the extent that Knox alleged that her guilty plea is not valid because it was predicated on the ineffective assistance of counsel as it relates to this issue, this allegation should also be resolved at the evidentiary hearing.

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

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[18]



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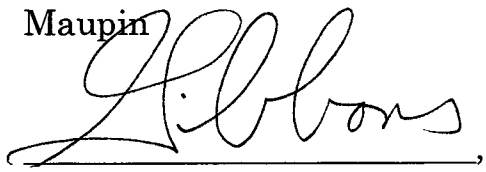

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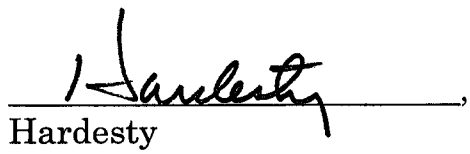

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cc: Hon. David A. Huff, District Judge
Alina Knox
Attorney General George Chanos/Carson City
Churchill County District Attorney
Churchill County Clerk

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[18]We have considered all proper person documents filed or received in this matter. We conclude that Knox is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.