

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELTON L. MATTHEWS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43822

FILED

MAR 10 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Felton Matthews, Jr.'s post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 13, 2002, the district court convicted Matthews, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen. The district court sentenced Matthews to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. This court affirmed Matthews' judgment of conviction and sentence on appeal.<sup>1</sup> The remittitur issued on August 5, 2003.

On May 17, 2004, Matthews 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

---

<sup>1</sup>Matthews v. State, Docket No. 39717 (Order of Affirmance, July 9, 2003).

district court declined to appoint counsel to represent Matthews or to conduct an evidentiary hearing. On December 9, 2004, the district court entered a written order denying Matthews' petition. This appeal followed.

Matthews first raised several claims of ineffective assistance of appellate counsel.<sup>2</sup> 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.<sup>3</sup> "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."<sup>4</sup> Appellate counsel is not required to raise every non-frivolous issue on appeal.<sup>5</sup>

First, Matthews argued that his appellate counsel was ineffective for failing to appeal the State's breach of the plea agreement. Specifically, Matthews contended that the State agreed to allow him to

---

<sup>2</sup>To the extent that Matthews raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they are outside the scope of a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea. See NRS 34.810(1)(a).

<sup>3</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>4</sup>Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

<sup>5</sup>Jones v. Barnes, 463 U.S. 745, 751 (1983).

withdraw his guilty plea if his psychosexual evaluation was not "successful."

Preliminarily, we note that there is nothing in the written guilty plea agreement or oral plea canvass to support Matthews' assertion that allowing him to withdraw his guilty plea in the event of a negative psychosexual evaluation was a term of the plea agreement. Moreover, the psychologist conducting Matthews' psychosexual evaluation found that he was not a high risk to re-offend and Matthews was therefore eligible for probation.<sup>6</sup> Consequently, Matthews failed to demonstrate that this issue had a reasonable likelihood of success on appeal, and the district court did not err in denying him relief.

Matthews additionally claimed that his appellate counsel was ineffective for failing to challenge the following errors with respect to his psychosexual evaluation: (1) the psychologist was indifferent to Matthews' welfare; (2) the evaluation referenced sexual assault charges which were dismissed in exchange for Matthews' guilty plea; and (3) the evaluation referenced a criminal charge that was never filed against Matthews.<sup>7</sup> Further, Matthews alleged that numerous factual statements included in the evaluation were erroneous. We conclude that Matthews did not establish that any of these claims had a reasonable likelihood of success on

---

<sup>6</sup>See 1997 Nev. Stat., ch. 524, § 7, at 2504.

<sup>7</sup>We note that Matthews informed the district court of this error prior to sentencing.

appeal. As such, Matthews failed to demonstrate that his appellate counsel's performance was deficient.

Second, Matthews alleged that his appellate counsel was ineffective for failing to support his direct appeal with various proper person motions he filed. Matthews' numerous proper person motions are unintelligible at times, but appear to challenge the evidence against him, as well as the State's witness list. We conclude that Matthews failed to demonstrate that his appellate counsel was ineffective for neglecting to support his direct appeal with proper person motions. By entering a guilty plea, Matthews waived all errors, including deprivation of constitutional rights, which occurred prior to the entry of his plea.<sup>8</sup> Matthews did not demonstrate that the outcome of his direct appeal would have been favorable if his counsel had utilized his proper person motions, and the district court therefore did not err in denying this claim.

Next, Matthews contended that his guilty plea was not knowingly entered. A guilty plea is presumptively valid, and Matthews carries the burden of establishing that his plea was not entered knowingly and intelligently.<sup>9</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>10</sup> We will not reverse a district

---

<sup>8</sup>See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

<sup>9</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

<sup>10</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>11</sup>

First, Matthews contended that his guilty plea was unknowingly entered because he was not adequately informed of lifetime supervision. Matthews was informed both in his written guilty plea agreement and during his plea canvass that he would be subject to a special sentence of lifetime supervision after any term of imprisonment and period of release on parole. Therefore, Matthews failed to demonstrate that his guilty plea was unknowingly entered, and we affirm the district court's denial of this claim.

Second, Matthews argued that his guilty plea was unknowingly entered because he did not have access to the law library while jailed at the Clark County Detention Center (CCDC). However, Matthews failed to adequately articulate how his allegedly limited access to the law library rendered his guilty plea involuntary. Further, we note that Matthews had some access to the law library while incarcerated at the CCDC because he filed numerous proper person documents in which he cited a variety of legal materials. We therefore conclude that Matthews did not establish that his guilty plea was unknowingly entered, and the district court did not err in denying this claim.

Next, Matthews claimed that he is actually innocent of the charges to which he pleaded guilty. However, during the plea canvass and in the signed guilty plea agreement, Matthews admitted to touching

---

<sup>11</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

and/or fondling the vaginal area of the nine-year old victim. Because Matthews failed to demonstrate that his guilty plea was involuntarily entered, we decline Matthews' invitation to scrutinize the State's evidence against him.

Finally, Matthews contended that his sentence is facially illegal or based on a mistaken assumption about his criminal record. Matthews argued that his sentence is illegal for the following reasons: (1) the victim's medical report did not reveal anal scarring; (2) he does not suffer from cognitive distortion; (3) there are no warrants for his arrest; (4) the Division of Parole and Probation lied about his military record; (4) a battery charge listed in his criminal history was erroneous; (5) he never threatened Child Protective Services; (6) his psychosexual evaluation was not done properly; (7) his prison file incorrectly provides that he has violent homosexual tendencies; (8) the State lied in his pre-sentence investigation report concerning a letter; (9) the State erred with respect to the witness list; and (10) he does not have a personality disorder.

These claims are outside the scope of a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.<sup>12</sup> To the extent that Matthews' petition can be construed as a motion to correct an illegal sentence, we conclude that these claims are outside the scope of such a motion as well.<sup>13</sup> To the extent that Matthews' petition can be construed as a motion to modify a sentence, we conclude that

---

<sup>12</sup>See NRS 34.810(1)(a).

<sup>13</sup>See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

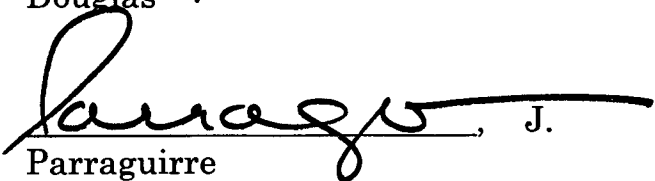
Matthews failed to establish that his sentence was based on a mistaken assumption about his criminal record that worked to his extreme detriment.<sup>14</sup> Accordingly, the district court did not err in denying these claims.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Matthews is not entitled to relief and that briefing and oral argument are unwarranted.<sup>15</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>16</sup>

 J.  
Maupin

 J.  
Douglas

 J.  
Parraguirre

---

<sup>14</sup>See id. We note that prior to sentencing, Matthews informed the district court of an erroneous battery charge listed on his pre-sentence investigation report.

<sup>15</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>16</sup>We have reviewed all documents that Matthews 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 Matthews has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge  
Felton L. Matthews Jr.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk