IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY C. WILSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43874

FILED

JAN 20 2005

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 Larry C. Wilson, Jr.'s post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On August 28, 2003, the district court convicted Wilson, pursuant to a guilty plea, of attempted sexual assault and battery with the intent to commit a crime. The district court sentenced Wilson to serve two concurrent terms of 24 to 60 months in the Nevada State Prison. No direct appeal was taken.

On June 8, 2004, Wilson 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 Wilson or to conduct an evidentiary hearing. On August 4, 2004, the district court denied Wilson's petition. This appeal followed.

In his petition, Wilson argued that his plea was involuntary. A guilty plea is presumptively valid, and Wilson carries the burden of

establishing that the plea was not entered knowingly and intelligently.[1] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[2] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3]

Specifically, Wilson claimed that his plea was involuntary because he was not advised of the consequences of lifetime supervision. He also asserted that such omission constituted a violation of state and federal contract law. Under Nevada law, the particular conditions of lifetime supervision are tailored to each individual case and, notably, are not determined until after a hearing is conducted just prior to the expiration of the sex offender's completion of a term of parole or probation, or release from custody.[4] In light of the fact that the conditions of lifetime supervision applicable to a specific individual are not generally determined until long after the plea canvass, we disagree that an advisement about those conditions is a requisite of a valid guilty plea. Rather, all that is constitutionally required is that the totality of the

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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).

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

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

[4]Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

circumstances demonstrates that Wilson was aware that he would be subject to the consequence of lifetime supervision before entry of the plea.[5]

Wilson's claim that he was unaware of the consequences of lifetime supervision is belied by the record.[6] During the plea canvass, the district court advised Wilson that he was subject to lifetime supervision, which would commence after any term of parole or probation. Wilson acknowledged that he understood. Further, the plea agreement provided that Wilson's sentence would include lifetime supervision "commencing after any period of probation or any term of imprisonment and period of release upon parole" and that the "special sentence of lifetime supervision must begin upon release from incarceration." Accordingly, we conclude that Wilson was properly advised of the lifetime supervision requirement and thus, his plea was not involuntary for this reason.[7]

Next, Wilson claimed that his counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a

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[5]Id. at 831, 59 P.3d at 1197.

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

[7]Wilson also asserted that because he was unaware of the lifetime supervision requirement, his "sentence should be set aside, modified, and the lifetime supervision requirement be vacated and plea withdrawn." Wilson noted that a motion to correct an illegal sentence was "brought by way of this writ of habeas corpus." To the extent that Wilson's habeas petition may be construed as a motion to correct an illegal sentence, we conclude Wilson's claim is without merit. Wilson's sentence was not facially illegal. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

judgment of conviction based on a guilty plea, Wilson must demonstrate that his counsel's performance fell below an objective standard of reasonableness.[8] Further, Wilson must demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.[9]

First, Wilson contended that his counsel was ineffective for failing to inform him that his sentence would include lifetime supervision. However, as discussed above, Wilson was adequately advised of the lifetime supervision requirement. Accordingly, we conclude that Wilson failed to demonstrate that his counsel was ineffective in this regard.

Second, Wilson argued that his counsel was ineffective for failing to inform him of his right to appeal and for failing to file an appeal. We disagree. Wilson's signed plea agreement advised him of his right to appeal.[10] Further, "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."[11] "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal."[12]

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[8]See Strickland v. Washington, 466 U.S. 668 (1984).

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

[10]See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

[11]Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); see Davis, 115 at 20, 974 P.2d at 660.

[12]See Davis, 115 Nev. at 20, 974 P.2d at 660.

Wilson did not allege that his counsel refused to file an appeal upon his request or that he otherwise expressed to counsel his dissatisfaction with his conviction. Moreover, Wilson failed to identify what issues he desired his counsel to pursue on appeal. Accordingly, we conclude that Wilson did not establish that his counsel was ineffective in this regard.

Finally, Wilson argued that an evidentiary hearing should have been conducted to explore the following claims: that he was not advised of the consequences of lifetime supervision; that his counsel failed to inform him of his right to appeal; and that his counsel allowed him to plead guilty when counsel was aware that he was innocent of the offenses. "A petitioner is entitled to a post-conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief."[13] Here, Wilson failed to support his claims with specific factual allegations and his claims are belied by the record. As discussed above, Wilson was advised prior to his guilty plea that his sentence included lifetime supervision. Further, his claim that his counsel was ineffective for failing to inform him of his right to appeal is without merit. Finally, during the plea canvass, Wilson admitted that he sexually assaulted the victim and struck her in the head and chest with the intent to commit the sexual assault. Accordingly, we conclude that the district court did not abuse its discretion in concluding

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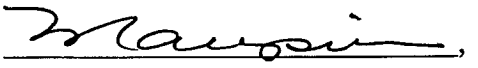
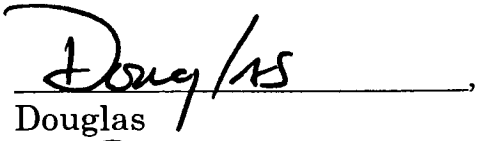
[13]Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002); see Hargrove, 100 Nev. at 503, 686 P.2d at 225.

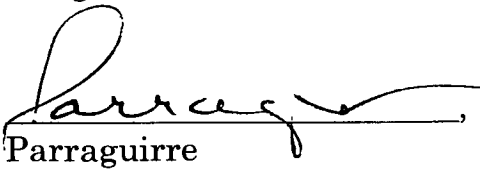
that Wilson's was not entitled to an evidentiary hearing on his habeas petition.[14]

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Wilson is not entitled to relief and that briefing and oral argument are unwarranted.[15] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 , J.
Maupin

 , J.
Douglas

 , J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Larry C. Wilson Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[14]See NRS 34.770.

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