

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY ALLEN MEYERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43883

FILED

DEC 06 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CLIFF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Randy Meyers' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On October 24, 2003, the district court convicted Meyers, pursuant to a guilty plea, of driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor resulting in substantial bodily harm. The district court sentenced Meyers to serve a term of 48 to 120 months in the Nevada State Prison. Meyers did not file a direct appeal.

On June 7, 2004, Meyers 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 Meyers or to conduct an evidentiary hearing. On October 11, 2004, the district court denied Meyers' petition. This appeal followed.

In his petition, Meyers first contended that his guilty plea was unknowingly entered. A guilty plea is presumptively valid, and Meyers

carries the burden of establishing that his 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 We will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³

Meyers argued that his guilty plea was unknowingly entered because there were discrepancies within the written plea agreement. However, Meyers failed provide any specific information whatsoever concerning these alleged discrepancies.⁴ Further, we have reviewed the written guilty plea agreement and note that it does not contain any contradictory language. Consequently, the district court did not err in denying him relief on this claim.

Next, Meyers argued 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

¹Bryant 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).

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

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

⁴See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁵See 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, Meyers claimed that his trial counsel was ineffective for failing to investigate whether the victims received substantial bodily harm. Meyers argued that although the victims suffered back, neck, shoulder, head, and hand injuries, this did not amount to substantial bodily harm. Meyers further contended that one of the victims' negligent driving contributed to the injuries sustained by him and his passenger.

We conclude that these claims are without merit. Meyers did not establish that his trial counsel acted unreasonably in failing to challenge the severity of the victims' injuries prior to the entry of his plea.⁸ Additionally, Meyers failed to demonstrate that his counsel acted unreasonably in failing to investigate whether one of the victims' own actions exacerbated the injuries. It is not necessary that trial counsel "fully and completely prepare for trial, exhausting all avenues of defense, before rendering advice concerning a negotiated arrangement proposed by the State."⁹ Finally, we note that in addition to driving while intoxicated,

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

⁷Strickland, 466 U.S. at 697.

⁸See NRS 0.060 (providing that substantial bodily harm is that which results in "protracted loss or impairment of the function of any bodily member or organ" or "[p]rolonged physical pain").

⁹Molina v. State, 120 Nev. ___, ___, 87 P.3d 533, 538 (2004).

Meyers was charged with leaving the scene of an accident; he received a substantial benefit in pleading guilty rather than facing a possible conviction of both charged offenses.

Second, Meyers claimed that his trial counsel was ineffective for informing him that he would receive a sentence of two to five years. A review of the record reveals that the written guilty plea agreement—which Meyers acknowledged having read, understood, and signed—provided that he would receive a sentence of between two and twenty years. Further, during the oral plea canvass, the district court informed Meyers that he would receive a sentence of between two and twenty years. A defendant's mere subjective belief about a potential sentence is insufficient to invalidate a guilty plea.¹⁰ We conclude that Meyers was adequately informed of the potential sentence he would receive, and the district court therefore did not err in denying this claim.

Next, Meyers argued that the prosecutor committed misconduct by charging him with a crime causing substantial bodily harm, when no such harm resulted. However, this claim is outside the scope of a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.¹¹ Moreover, as discussed previously, the victims suffered back, neck, shoulder, head, and hand injuries.¹² Therefore, we affirm the order of the district court with respect to this claim.


¹⁰Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).


¹¹See NRS 34.810(1)(a).


¹²See NRS 0.060.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Meyers is not entitled to relief and that briefing and oral argument are unwarranted.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John S. McGroarty, District Judge
Randy Allen Meyers
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).