

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEFAN JOHN STANKIC,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43996

FILED

MAY 03 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On October 10, 2003, the district court convicted appellant, pursuant to a guilty plea, of one count each of attempted sexual assault and sexually motivated coercion. The district court sentenced appellant to serve a term of 24 to 120 months in the Nevada State Prison for the attempted sexual assault conviction and a consecutive term of 12 to 48 months for the coercion conviction. Appellant did not file a direct appeal.

On April 13, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On April 27, 2004, appellant filed a supplement to the petition. The State opposed the petition and supplement. Appellant filed a reply. Pursuant to NRS 34.750, the district court declined to appoint counsel to represent appellant. On August 4, 2004, the district court denied appellant's petition after conducting an evidentiary hearing. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of counsel. To state a claim of ineffective assistance of counsel

sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.¹ A petitioner must further establish a reasonable probability that the results of the proceedings would have been different.² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁴

First, appellant claimed that his counsel was ineffective for failing to file an appeal on his behalf, although he requested counsel to do so. Appellant's counsel testified during the evidentiary hearing that appellant never requested an appeal. Further, appellant testified at the evidentiary hearing that he did not request an appeal within 30 days from entry of the judgment of conviction.⁵ We conclude that the district court's factual determination was supported by substantial evidence and was not clearly wrong.⁶ Accordingly, we affirm the order of the district court with respect to this claim.

¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

²Strickland, 466 U.S. at 694.

³Id. at 697.

⁴Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁵See NRAP 4(b)(1) (requiring that an appeal from a judgment of conviction be filed within 30 days of entry of the judgment of conviction).

⁶See Riley, 110 Nev. at 647, 878 P.2d at 278.

Second, appellant claimed that his counsel was ineffective for recommending he waive his preliminary hearing. Appellant argued that he is Croatian and he did not understand the consequences of waiving the preliminary hearing because he did not have an interpreter inform him of the consequences. This claim is belied by the record.⁷ Our review of the record on appeal reveals that the justice's court informed appellant of the consequences of waiving his preliminary hearing and that a court interpreter was present during this hearing. Accordingly, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to investigate whether he was Mirandized⁸ or told in his language what was going on. We conclude that appellant failed to demonstrate that his counsel was deficient in this regard. Appellant failed to identify what additional investigation his counsel should have conducted such that appellant would not have pleaded guilty. Further, our review of the record on appeal reveals that appellant can speak, write and understand the English language and that appellant refused the assistance of an interpreter on more than one occasion. Accordingly, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel was ineffective for refusing to allow him to see and review the discovery material. Appellant failed to provide sufficient facts to support this assertion.⁹ Accordingly, we conclude that the district court did not err in denying this claim.

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

⁸See Miranda v. Arizona, 384 U.S. 436 (1966).

⁹See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Fifth, appellant claimed that his counsel was ineffective for failing to investigate or call experts to testify on his behalf. Appellant failed to demonstrate that his counsel was deficient in this regard. Appellant argued that his counsel should have investigated a toxicity report of the drinks appellant consumed and investigated appellant's defense that he and the victim engaged in consensual intercourse. It appears from the record on appeal that no toxicity report was available because the glasses the drinks were served in were cleaned prior to the incident being reported. Further, appellant failed to identify what additional investigation his counsel should have conducted, such that he would not have pleaded guilty and would have insisted on going to trial.¹⁰ Accordingly, we conclude that appellant failed to demonstrate that his counsel was deficient in this regard and we affirm the order of the district court with respect to this claim.

Sixth, appellant claimed that his counsel was ineffective for failing to object to the fact that the deputy district attorney prosecuting his case was running for a district court judgeship. Appellant failed to demonstrate any conflict between the deputy district attorney and himself. Further, appellant failed to demonstrate that had such an objection been made, he would not have pleaded guilty and would have insisted on going to trial. Accordingly, we conclude that appellant failed to demonstrate that his counsel was deficient in this regard and we affirm the order of the district court with respect to this claim.

¹⁰See id.; Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

Seventh, appellant claimed that his counsel was ineffective for failing to explain the consequences and conditions of lifetime supervision. There is no requirement that a criminal defendant be informed of the precise conditions of lifetime supervision. This court requires only that the criminal defendant be informed of lifetime supervision.¹¹ The record reveals that appellant was informed of the requirement of lifetime supervision. Appellant's plea agreement clearly stated that he would be subject to lifetime supervision "after any period of probation or any term of imprisonment and period of release upon parole." The agreement also provided that lifetime supervision must begin upon release from incarceration. Moreover, during the plea canvass, the district court specifically asked appellant if he read and understood the plea agreement and inquired whether appellant had any questions regarding the plea. Appellant responded that he understood the plea agreement and stated that he did not have any questions. We conclude that appellant did not demonstrate that his counsel's performance was deficient and we affirm the order of the district court with respect to this claim.

Eighth, appellant claimed that his counsel was ineffective for failing to assist him in withdrawing his plea. Appellant failed to provide sufficient facts to support this assertion.¹² Accordingly, we conclude that the district court did not err in denying this claim.

Ninth, appellant claimed that his counsel was ineffective for coercing him to plead guilty. Appellant argued that his counsel informed

¹¹See Palmer v. State, 118 Nev. 823, 830, 59 P.3d 1192, 1196-97 (2002).

¹²See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

him that he would be facing life in prison if he did not plead guilty. Appellant was charged with sexual assault, victim 65 years of age or older. If convicted, appellant was facing a maximum term of two consecutive life sentences.¹³ Because appellant's counsel properly informed appellant of the maximum sentence appellant may have been facing, we conclude that appellant did not demonstrate that his counsel's performance was deficient. Accordingly, we affirm the order of the district court with respect to this claim.

Tenth, appellant claimed that his counsel was ineffective for failing to withdraw from representing appellant. Appellant failed to provide sufficient facts to support this assertion.¹⁴ Accordingly, we conclude that the district court did not err in denying this claim.

Eleventh, appellant claimed that his counsel was ineffective for failing to make sure he had a copy of the pre-sentence investigation report and an opportunity to comment upon it. Appellant failed to demonstrate that he was prejudiced by his counsel's conduct. Appellant did not allege that the pre-sentence investigation report contained any errors or that the district court relied upon those errors when sentencing him. Accordingly, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his guilty plea was not entered knowingly or voluntarily. A guilty plea is presumptively valid, and appellant carries the burden of establishing that his plea was not entered

¹³See NRS 200.366; NRS 193.167.

¹⁴See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

knowingly and intelligently.¹⁵ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.¹⁶ This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.¹⁷

First, appellant claimed that his guilty plea was not knowingly and intelligently entered because he did not have the help or assistance of an interpreter. This claim is belied by the record.¹⁸ The record reveals that standby interpreters were present at appellant's hearings and appellant refused the assistance of the interpreters. Further, appellant's counsel testified at the evidentiary hearing that an interpreter read the entire plea agreement to appellant in Croatian prior to appellant signing the plea agreement. Accordingly, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his guilty plea was not knowingly and intelligently entered because he was not informed of the nature of lifetime supervision, and in fact, he was misinformed about the meaning of lifetime supervision. Appellant argued that in Palmer v. State¹⁹ this court altered the nature of lifetime supervision and made lifetime supervision punitive rather than non-punitive. Contrary to

¹⁵See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

¹⁶State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

¹⁷Hubbard, 110 Nev. at 675, 877 P.2d at 521.

¹⁸See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

¹⁹118 Nev. 823, 59 P.3d 1192.

appellant's assertion, this court did not alter the status or application of lifetime supervision in Palmer. Rather, in Palmer this court stated that, "[d]espite some indications that the Nevada Legislature intended lifetime supervision to be a civil law enforcement tool, . . . it is sufficiently punitive in nature and effect as to render it a direct penal consequence of a guilty plea, a consequence of which the defendant must be advised."²⁰ The record reveals that appellant was advised that lifetime supervision was a consequence of his guilty plea, which is all that this court requires.²¹ Accordingly, the district court did not err in denying this claim.

Third, appellant claimed that his guilty plea was not knowingly and intelligently entered because there was no factual basis for the plea. This claim is belied by the record.²² At the plea canvass, appellant admitted that while he was "[u]nder the influence of heavy alcohol" he was "trying to have sex without [the victim's] consent." In the guilty plea agreement appellant also admitted that he forced "the unconscious body of [the victim] into a position to commit sexual assault" and subjected the victim to sexual penetration against her will. Accordingly, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his guilty plea was not knowingly and intelligently entered because he was denied the assistance of a consulate and forced to waive his right to trial. Appellant failed to

²⁰Id. at 829, 59 P.3d at 1196.

²¹Id. at 831, 59 P.3d at 1197.

²²See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

provide sufficient facts to support this assertion.²³ Accordingly, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his guilty plea was not knowingly and intelligently entered because his counsel did not consult with him prior to entering the plea. Appellant argued that his counsel should have stopped the plea canvass to further discuss the plea agreement and assist him in forming questions to ask about the plea agreement. During the plea canvass, the district court inquired whether appellant's counsel answered any questions, with or without the assistance of an interpreter, that appellant had regarding the plea agreement. Appellant informed the court that he did not have his counsel answer any questions. The district court then inquired whether appellant had any questions regarding the plea agreement at that time. Appellant informed the court that he did not have any questions regarding the plea agreement. At the plea canvass, appellant further informed the district court that he had read, signed and understood the plea agreement. We conclude that appellant failed to demonstrate that his plea was not knowingly and intelligently entered. Accordingly, we affirm the district court's order with respect to this claim.

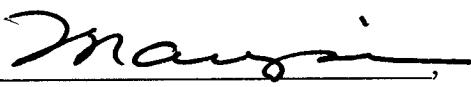
In his petition, appellant also claimed that the district court erred by: (1) denying his motion to fire his counsel and have new counsel appointed to represent him; (2) not providing his counsel an opportunity to comment on the pre-sentence investigation report; (3) denying his pre-sentence motion to withdraw his guilty plea; and (4) not allowing him to contact a diplomat prior to entering his guilty plea. Appellant further

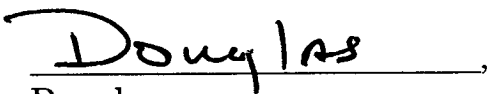
²³See *id.* at 502, 686 P.2d at 225.

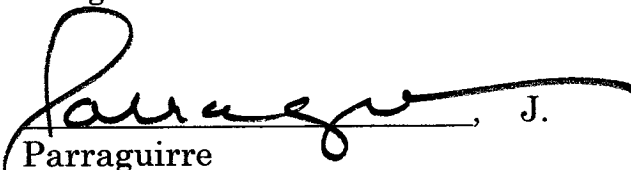
claimed that the State engaged in prosecutorial misconduct by failing to remove the deputy district attorney and by making statements and threats that coerced him into pleading guilty. These claims are outside the narrow scope of claims permissible in a post-conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.²⁴

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.²⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.²⁶


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

²⁴See 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).

²⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²⁶We have considered all proper person documents filed or received in this matter and we conclude that no relief based on those submissions is warranted.

cc: Hon. Sally L. Loehrer, District Judge
Stefan John Stankic
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk