

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVONTAY LAMONT WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44303

**FILED**

APR 07 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 dismissing appellant Devontay Williams' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On October 22, 2003, the district court convicted Williams, pursuant to a guilty plea, of one count of burglary. The district court sentenced Williams to a term of 22 to 96 months in the Nevada State Prison. The district court suspended Williams' sentence and placed him on probation for a period of time not to exceed 36 months.<sup>1</sup> No direct appeal was taken.

On August 4, 2004, Williams 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 Williams or to conduct an evidentiary hearing. On November 2, 2004, the district court dismissed Williams' petition. This appeal followed.

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<sup>1</sup>On May 6, 2004, the district court entered an order that revoked Williams' probation, executed the original sentence and gave him credit for 53 days time served.

In his petition, Williams claimed that his guilty plea was not entered knowingly and voluntarily and his counsel was ineffective. A guilty plea is presumptively valid, and Williams carries the burden of establishing that his plea was not entered knowingly and intelligently.<sup>2</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>3</sup> This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>7</sup>

First, Williams claimed that his plea was not knowingly entered and his counsel was ineffective because he was not informed of his right to have his case investigated and an actual innocence defense presented on his behalf. At the plea canvass, Williams acknowledged that

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

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

<sup>4</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

<sup>5</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

<sup>7</sup>Strickland, 466 U.S. at 697.

he understood that he was giving up the right to a jury trial which included giving up his right to confront his accusers, cross-examine the State's witnesses and subpoena witnesses on his own behalf. After being informed of the elements of robbery and what the State expected to prove, Williams stated that he wished to change his plea to guilty. Williams also indicated that he was changing his plea to guilty for the sole reason that he felt he was guilty of the charge of burglary. Further, in the guilty plea agreement, which Williams acknowledged having read and understood, and at the plea canvass, Williams admitted that he willfully and unlawfully entered a certain hotel or motel room with the intent to commit larceny. Williams failed to demonstrate that, under the totality of the circumstances, his plea was unknowingly entered or that he was actually innocent of the charge of burglary. Accordingly, we conclude that the district court did not err in dismissing this claim.


Second, Williams claimed that his counsel was ineffective for failing to investigate his case before recommending that he enter into a plea agreement. Specifically, Williams argued that his counsel should have interviewed him, reviewed surveillance videotapes and questioned the validity of the victim's identification of him. Williams failed to demonstrate that, had his counsel conducted this investigation, he would not have pleaded guilty and would have insisted on going to trial. Accordingly, we conclude that the district court did not err in dismissing this claim.

Third, Williams claimed that his counsel was ineffective for failing to file a motion to dismiss. Specifically, Williams argued that his counsel should have filed a motion to dismiss his charges because the witness could not properly identify him. Williams failed to provide


sufficient facts to support his assertion that the witness would not have been able to identify him.<sup>8</sup> Therefore, he failed to demonstrate that his counsel was ineffective for failing to file a motion to dismiss. Accordingly, we conclude that the district court did not err in dismissing this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Williams is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

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<sup>8</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

<sup>9</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have reviewed the brief that Williams submitted in proper person as part of his notice of appeal, and we conclude that no relief based upon that submission is warranted. To the extent that Williams has attempted to present claims or facts in that submission which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Steven R. Kosach, District Judge  
Devontay Lamont Williams  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk