

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY LEE WILLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44582

FILED

FEB 16 2006

ORDER AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On June 19, 2003, the district court convicted appellant Randy Lee Willis, pursuant to a guilty plea, of lewdness with a child under the age of 14 years. Willis was sentenced to life in prison with the possibility of parole after 10 years. No direct appeal was taken.

On April 16, 2004, Willis filed a post-conviction petition for a writ of habeas corpus, which the district court dismissed without an evidentiary hearing. This appeal followed.

Willis contends that his guilty plea was unknowing and involuntary because counsel assured him that he would receive probation if he passed a psychosexual evaluation. A guilty plea is presumptively valid, especially when it is entered into on the advice of counsel.¹ Willis carries the burden of establishing that his plea was not entered knowingly

¹Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004).

and intelligently.² In determining the validity of a guilty plea, this court looks to the totality of the circumstances.³

Here, Willis raised a bare allegation that his counsel advised him that he would receive probation if he passed the psychosexual evaluation process. The record belies Willis' claim. He acknowledged in his written plea agreement that he faced life in prison with the possibility of parole and that he was not eligible for probation unless a psychosexual evaluation was completed pursuant to NRS 176.139 certifying that he did not represent a high risk to reoffend based upon a currently accepted standard of assessment. During the plea canvass, the district court informed Willis that it was not bound to follow the plea bargain and that sentencing was entirely within its discretion. The district court further advised Willis that the maximum punishment for his offense was life in prison and that probation was not available unless a psychosexual evaluation was completed pursuant to NRS 176.139 certifying that he did not represent a high risk to reoffend. Moreover, the district court specifically asked Willis if he was promised a particular sentence, to which he replied no. Although the written agreement and plea canvass indicated that probation was a possibility if certain conditions were met, neither evinced a promise or guarantee of probation.

The "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as

²Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

³State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000).

involuntary or unknowing."⁴ Contrary to Willis' allegation, the record shows that he was informed that a favorable psychosexual evaluation at best made probation a possibility. Consequently, we conclude that the district court did not err in dismissing this claim.

Willis further asserts that his counsel was ineffective for, among other reasons, failing to file a direct appeal when he requested his counsel do so. If Willis expressed a desire to appeal, his counsel was obligated to advise Willis of the right to appeal and to perfect an appeal on his behalf.⁵ "Prejudice is presumed for purposes of establishing ineffective assistance of counsel when counsel's conduct completely denies a convicted defendant an appeal."⁶ Willis is entitled to an evidentiary hearing on this matter if his claim is supported with specific factual allegations that if true would entitle him to relief and are not belied by the record.⁷ Here, Willis' allegation is not belied by the record, and therefore he is entitled to an evidentiary hearing for the purpose of determining whether he requested his counsel to file a direct appeal on his behalf.⁸

Willis also claimed in his petition below that he was under the effects of a mind altering drug, Elavil, which rendered him incapable of entering into a knowing, intelligent, and voluntary plea. Willis' allegation

⁴Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

⁵Thomas v. State, 115 Nev. 148, 151, 979 P.2d 222, 224 (1999).

⁶Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002).

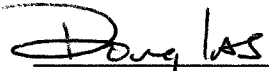
⁷See Thomas, 115 Nev. at 151, 979 P.2d at 224; Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); cf. NRS 34.770(1), (2).


⁸In light of our order, we decline to consider Willis's remaining ineffective assistance of counsel claims.

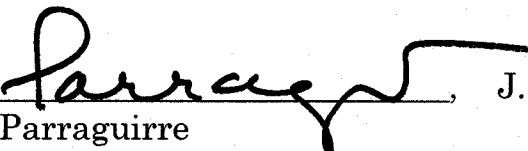
is not specifically belied by the record before us.⁹ Therefore, we conclude that this claim as well should be the subject of an evidentiary hearing to determine whether he was under the influence of a drug that effectively rendered his plea involuntary and unknowing.

Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for evidentiary proceedings on Willis' appeal deprivation claim and on the issue of whether his use of Elavil rendered his plea unknowing and involuntary.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Karla K. Butko
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁹Mann, 118 Nev. at 353, 46 P.3d at 1229.