IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDOLPH PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44594

FILED

AUG 24 2005

CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 21, 2004, Patterson was convicted, pursuant to a guilty plea, of one count of battery with the use of a deadly weapon causing substantial bodily harm. In exchange for Patterson's guilty plea, the State agreed to dismiss the count of attempted murder with the use of a deadly weapon and not pursue habitual criminal adjudication. The charges stem from Patterson shooting his wife. The district court sentenced Patterson to serve a prison term of 48-160 months and ordered him to pay $5,585.00 in restitution. This court dismissed Patterson's untimely direct appeal due to a lack of jurisdiction.[1]

On September 24, 2004, with the assistance of counsel, Patterson filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed Patterson's petition and filed a motion to

[1]Patterson v. State, Docket No. 42868 (Order Dismissing Appeal, April 26, 2004).

dismiss the petition. Patterson filed a reply to the State's opposition and motion to dismiss. The district court conducted a hearing, and on February 4, 2005, entered an order summarily denying Patterson's petition. This timely appeal followed.[2]

Patterson contends that his guilty plea was not entered knowingly and voluntarily. More specifically, Patterson argues that his plea was not valid because "he was unmedicated for his diagnosed mental illness when he signed" the guilty plea agreement. Patterson also contends that his trial counsel was ineffective for allowing him to enter into a plea agreement while not properly medicated, and that it was "judicial error" for the district court to accept his guilty plea. We disagree with Patterson's contentions.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[3] A defendant is competent to enter a plea if he has: (1) "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'"; and (2) "'a rational as well as factual

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[2]The district court's order denying Patterson's petition did not contain specific findings of fact and conclusions; accordingly, on May 17, 2005, we remanded the case back to the district court for the limited purpose of complying with the mandates of NRS 34.830(1). On June 13, 2005, the district court entered a second order denying Patterson's petition; the order contained the necessary findings of fact and conclusions of law, and therefore, this court is now able to determine the basis for the district court's decision.

[3]Bryant 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).

understanding of the proceedings against him.'"[4] In determining the validity of a plea, this court looks to the totality of the circumstances[5] and will not reverse a district court's determination absent a clear abuse of discretion.[6]

Additionally, the right to the effective assistance of counsel applies "when deciding whether to accept or reject a plea bargain."[7] To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that: (1) counsel's errors were so severe that there was a reasonable probability that the outcome would have been different,[8] or (2) but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial.[9] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[10] Finally, a district court's factual finding regarding a claim of ineffective

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[4]Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

[5]State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

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

[7]See Larson v. State, 104 Nev. 691, 693 n.6, 766 P.2d 261, 262 n.6 (1988) (citing McMann v. Richardson, 397 U.S. 759 (1970)).

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

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

[10]Strickland, 466 U.S. at 697.

assistance of counsel is entitled to deference so long as it is supported by substantial evidence and is not clearly wrong.[11]

We conclude that the district court did not err in denying Patterson's habeas petition. The district court found that: (1) the plea canvass was thorough; (2) Patterson understood the rights he was waiving by pleading guilty; (3) the guilty plea was not coerced; and (4) Patterson understood the consequences of his guilty plea, including the possible sentence. Further, Patterson has not supported his claim with any specificity or provided any evidence indicating that his plea was invalid or that he did not understand the proceedings because he was not medicated.[12] We note that a licensed psychologist evaluated Patterson and determined that although he "presented as paranoid and has some psychotic symptoms which cause him occasional mental confusion," that Patterson "ha[d] no difficulty understanding the court process" and was deemed competent to stand trial. Therefore, we conclude that Patterson has not demonstrated, let alone even alleged, that the district court erred in finding that his guilty plea was validly entered.

Additionally, we conclude that the district court did not err in rejecting Patterson's claim of ineffective assistance of counsel. In fact, Patterson, again, has not even assigned error to the district court's order and instead relitigates the arguments made below. Further, our review of the record on appeal reveals that Patterson's trial counsel was aware of his mental illness and retained both the psychologist noted above and a forensic psychiatrist to evaluate him. The psychologist determined that

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

[12]Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Patterson was competent to stand trial, and the psychiatrist opined that Patterson was likely not "insane" at the time of the shooting pursuant to this court's decision in Finger v. State.[13] We also note that Patterson substantially benefited from the plea negotiations conducted by trial counsel – in exchange for his plea, the State agreed to drop an additional charge of attempted murder with the use of a deadly weapon and not seek habitual criminal adjudication. Therefore, we conclude that Patterson is not entitled to relief.

Next, Patterson contends that the district court erred in determining that his allegations of prosecutorial misconduct and judicial error were procedurally barred. Patterson claimed that the failure to provide him with medication during his incarceration, and allowing him to plead guilty and accepting his plea during his unmedicated state, amounted to both prosecutorial misconduct and judicial error. Citing to Estelle v. Gamble for support,[14] Patterson states that "[i]nmates have no choice but to rely on the State to provide for their medical needs and the State cannot show deliberate indifference to those needs without violating Constitutional rights."

As we noted above, the district court did not err in finding that Patterson's guilty plea was validly entered. Therefore, Patterson's claim that prosecutorial misconduct and judicial error resulted in an unknowing and involuntary plea is without merit. And finally, to the extent that Patterson is raising a constitutional challenge to the conditions of his

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[13]117 Nev. 548, 27 P.3d 66 (2001).

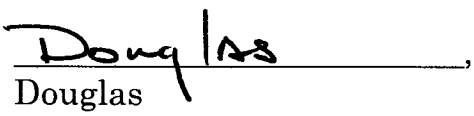
[14]429 U.S. 97, 103-04 (1976).

confinement, we conclude that such an argument is not cognizable in a habeas petition.[15]

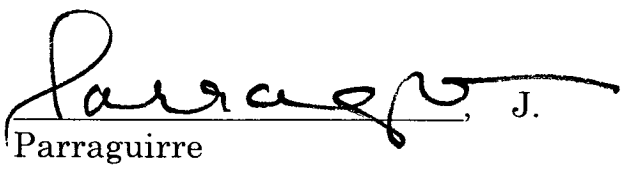
Having considered Patterson's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin



_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Longabaugh Law Offices
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[15]See Nelson v. Campbell, 541 U.S. 637, 643 (2004); Preiser v. Rodriguez, 411 U.S. 475, 499 (1973) ("a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody"); see also Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).