

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN DEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45066

FILED

FEB 09 2006

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Justin Dean's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Dean was charged with one count each of first-degree kidnapping and robbery with the use of a deadly weapon for detaining, battering, and robbing a pizza deliveryman at gunpoint.¹ Dean entered plea negotiations with the State and, on May 9, 2003, was convicted pursuant to a guilty plea of one count of robbery. The district court sentenced Dean to serve a prison term of 24 to 60 months. Dean did not file a direct appeal.

On May 4, 2004, Dean, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus in the district court.

¹At the preliminary hearing, the victim testified that, after Dean and his co-defendants robbed him, they placed a pillowcase over his head, struck him, and ordered him at gunpoint towards the apartment's bathtub. The victim testified that he believed the men were going to kill him and "with the grace of God and the strength of adrenaline, flight and fight," fought back and fled the apartment as Dean his co-defendants kicked and hit him in an attempt to prevent his escape.

The State opposed the petition, and Dean filed a supplement to the petition. After hearing arguments from counsel, the district court denied the petition. This timely appeal followed.

Dean contends that the district court erred in denying his petition because he was not competent to enter his guilty plea. More specifically, Dean argues that his plea was not valid because "he had a learning disability and was functioning in the low range of intelligence." Dean also contends that his guilty plea is invalid because the district court failed to conduct a competency determination after defense counsel "briefly mentioned the psychological problems of Dean." We conclude that Dean's contentions lack merit.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.² 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 understanding of the proceedings against him."³ In determining the validity of a plea, this court looks to the totality of the circumstances⁴ and will not reverse a district court's determination absent a clear abuse of discretion.⁵

²Bryant 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).

³Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

⁴State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁵Hubbard, 110 Nev. at 675, 877 P.2d at 521.

In this case, the district court found that Dean was competent to enter a guilty plea, and the guilty plea was knowingly and voluntarily entered. We conclude that the district court's finding is supported by substantial evidence and is not clearly wrong.⁶ There is no indication in the record that Dean suffered from a mental illness that rendered him unable to understand the criminal proceedings against him.⁷ Likewise, there is no indication in the record that Dean's competency was at issue prior to entry of the plea and that a competency hearing should have been conducted. Although Dean points out that he underwent a psychological evaluation prior to sentencing, the evaluation was conducted to assist in vocational planning and concluded that Dean "possesse[d] the academic and intellectual skills to attend some type of vocational/trade school." Moreover, the medical records document that Dean was treated for depression, but do not indicate that Dean's mental health status rendered him incompetent to enter a guilty plea. We note that Dean was thoroughly canvassed, signed a written plea agreement, and substantially

⁶See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁷We note that Dean has not provided this court with transcripts of the plea canvass, sentencing hearing or argument on the post-conviction petition. We emphasize that it is the responsibility of counsel to provide documents necessary to resolve an appeal. See NRAP 28(e), 30(b); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). We have therefore relied on the description of those proceedings set forth in the district court minutes and appellate briefs as neither party questions the accuracy of those descriptions.

benefited from the plea negotiations.⁸ Accordingly, the district court did not err in denying the petition.

Having considered Dean's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Lizzie R. Hatcher
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸In exchange for the guilty plea, the State agreed to drop the first-degree kidnapping count and the deadly weapon enhancement on the robbery count.