

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIMBERLY M. JACKSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45076

**FILED**

JUL 06 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On March 31, 2004, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of one count of attempted possession of a controlled substance. The district court sentenced appellant to serve a term of twelve to forty-eight months in the Nevada State Prison. No direct appeal was taken.

On December 21, 2004, appellant 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 appellant or to conduct an evidentiary hearing. On May 11, 2005, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

In her petition, appellant contended that she received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability of a different outcome absent the alleged errors.<sup>2</sup> When a conviction is based upon a guilty plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>3</sup> The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

Appellant claimed that her trial counsel informed her that he had made mistakes in his representation of her and that he would be willing to testify to these mistakes. Appellant claimed that her trial counsel also told her that the State did not have any evidence and that she should not have entered a guilty plea. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Appellant failed to provide any facts in support of these claims.<sup>5</sup> Therefore, we conclude that the district court did not err in denying this claim.

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

<sup>3</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>4</sup>Strickland, 466 U.S. at 697.

<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Next, appellant claimed that the district court failed to give her a chance to fully explain herself at sentencing. She further claimed that the district court improperly sent her to prison on her first drug charge and that she believed that her crime should only have been a misdemeanor. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a conviction based upon a guilty plea.<sup>6</sup> Therefore, we conclude that the district court properly denied these claims.

Finally, it appeared that appellant claimed that her guilty plea was involuntary and unknowing. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>7</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>8</sup> Appellant failed to provide specific facts in support of this claim, and thus, she failed to carry her burden. Therefore, we conclude that the district court properly denied this claim.

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<sup>6</sup>See NRS 34.810(1)(a).

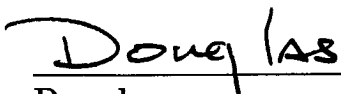
<sup>7</sup>Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

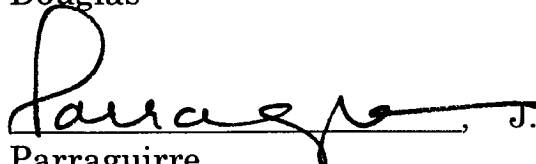
<sup>8</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

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.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Kimberly M. Jackson  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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