

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE STEVEN YANEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45457

**FILED**

**AUG 18 2005**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 February 5, 2004, the district court convicted appellant, pursuant to a guilty plea, of four counts of securities fraud against a person over the age of 65 years, one count of offering to sell or sale of an unregistered security, and one count of transacting business as an unlicensed broker-dealer.<sup>1</sup> The district court sentenced appellant to serve terms totaling sixty months to one hundred and eighty months in the Nevada State Prison. This court dismissed appellant's untimely appeal from his judgment of conviction for lack of jurisdiction.<sup>2</sup>

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<sup>1</sup>The district court entered an amended judgment of conviction on March 18, 2005, to increase the amount of presentence credit.

<sup>2</sup>Yanez v. State, Docket No. 43180 (Order Dismissing Appeal, May 18, 2004).

On January 19, 2005, 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 July 5, 2005, the district court denied appellant's petition. This appeal followed.<sup>3</sup>

In his petition, appellant contended that he received ineffective assistance of counsel. 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 his counsel's performance fell below an objective standard of reasonableness and a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>4</sup> The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.<sup>5</sup>

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<sup>3</sup>On March 14, 2005, after the district court had orally denied the petition, appellant filed a response to the State's opposition. We conclude that the district court did not abuse its discretion in declining to consider the response as it was filed subsequent to the oral decision to deny the petition and permission had not been granted for supplemental pleadings. See NRS 34.750(5).

<sup>4</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>5</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that his trial counsel was ineffective for failing to inform him of the older victim enhancement pursuant to NRS 193.167. Appellant failed to demonstrate that he received ineffective assistance of counsel. The written guilty plea agreement expressly informed appellant of the older victim enhancement pursuant to NRS 193.167, and the penalties attached to the older victim enhancement. Appellant affirmatively indicated in the written guilty plea agreement that the consequences of the guilty plea agreement had been explained to him by his counsel. Appellant further affirmatively indicated during the plea canvass that he had read, understood and discussed the plea agreement with his counsel. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his guilty plea was not valid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>6</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>7</sup> In

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<sup>6</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>7</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>8</sup>

Appellant claimed that he did not understand the consequences of his guilty plea because he was not informed of the penalty for the older victim enhancement. Appellant failed to carry his burden of demonstrating that his plea was not knowingly and voluntarily entered. As discussed above, the written guilty plea agreement expressly informed appellant of the older victim enhancement pursuant to NRS 193.167, and the penalties attached to the older victim enhancement. Appellant further affirmatively indicated during the plea canvass that he had read, understood and discussed the plea agreement with his counsel. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his double jeopardy and due process rights had been violated because he had not been informed of the older victim enhancement. He further claimed that the State did not provide proof of the victims' ages. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.<sup>9</sup> Therefore, we conclude that the district court did not err in denying these claims.


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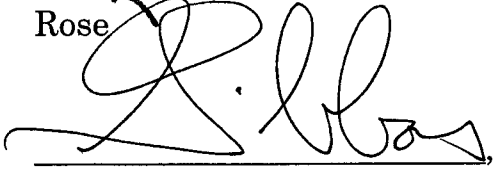
<sup>8</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

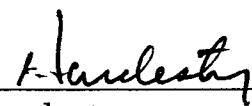
<sup>9</sup>See NRS 34.810(1)(a).

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>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>11</sup>

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

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

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

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<sup>10</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>11</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the petition below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge  
Lawrence Steven Yanez  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk