

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDSEY DENISE SAFBOM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45580

FILED

OCT 21 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richard
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. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On July 16, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of mid-level trafficking in a controlled substance. The district court sentenced appellant to serve a term of forty to one hundred and eighty months in the Nevada State Prison. This sentence was imposed to run consecutively to the sentence imposed in district court case number C189215. No credits were given. Appellant did not file a direct appeal.

On June 20, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 June 23, 2005, the district court denied appellant's petition. This appeal followed.

In her petition, appellant contended that she received ineffective assistance of trial 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.¹ 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.² The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.³

First, appellant claimed that her trial counsel was ineffective for informing her that she would have the sentence in the instant case imposed concurrently with the sentence in her other district court case and that she would receive a two to ten year sentence. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Appellant was informed in the written guilty plea agreement and during the plea canvass that the offense to which she pleaded guilty carried a potential term of two to fifteen years. In exchange for her guilty plea, the State agreed not to pursue additional charges, agreed to recommend that the sentence in the instant case be imposed concurrently with the other district court case, and agreed to recommend an ten-year cap on the sentence. The State abided by the terms of the plea agreement and recommended a concurrent sentence and a ten-year cap on

¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

³Strickland, 466 U.S. at 697.


the sentence. The State did not agree to recommend a minimum sentence of two years. Appellant was further informed in the written guilty plea agreement and during the plea canvass that the district court was not required to follow the recommendation of the State. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate her guilty plea as involuntary and unknowing.⁴ Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

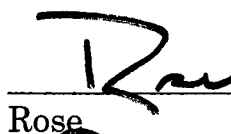
Second, appellant claimed that her trial counsel was ineffective for informing her that she would get credit for presentence incarceration. Appellant failed to demonstrate that she was prejudiced. The written guilty plea agreement contained the following statement, "I will received [sp] credit for the presentence incarceration time, if any." No presentence incarceration time was available in the instant case. NRS 176.055(2)(b) specifically provides that an offender is not eligible for credit for presentence incarceration if the offense was committed while the offender was on probation from a Nevada conviction. Appellant was on probation from two Nevada convictions when she committed the instant offense. Appellant failed to demonstrate that she would not have entered a guilty plea in the instant case absent the arguably ambiguous language in the guilty plea agreement about credits. In pleading guilty, appellant avoided the harsher potential for high-level trafficking—the original trafficking charge in the instant case. Therefore, we conclude that the district court did not err in determining that this claim lacked merit.

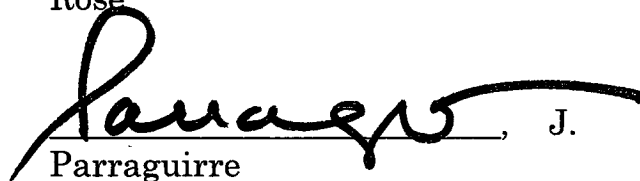
⁴See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. John P. Davis, District Judge
Lindsey Denise Saftom
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).