IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER E. TIMOTHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46331

FILED

JUL 13 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 10, 2005, the district court convicted appellant, pursuant to a guilty plea, of stop required on signal of a police officer. The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison. No direct appeal was filed.

On August 16, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss 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 November 4, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended his guilty plea was invalid.[1] A guilty plea is presumptively valid and petitioner carries the burden of establishing that the plea was not entered knowing and intelligently.[2] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[3]

First, appellant contended his guilty plea was invalid because he was taking medication at the time he entered the plea. However, appellant failed to specify what medication he was taking when he entered his plea and how the medication rendered him unable to enter a knowing, intelligent plea.[4] Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant contended his plea was invalid because he was not advised before entering the plea that it would have an "impact and restraint on pending trial." Appellant failed to specify how entering his plea negatively affected a "pending trial."[5] We note that appellant had

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[1]Although appellant contended in his petition that he should have been allowed to withdraw his guilty plea before sentencing, our review of the record on appeal reveals that appellant never made a motion to do so.

[2]Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

[3]State v. Freese, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000).

[4]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

[5]See id.

seven felony convictions before entering his guilty plea in this case. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also 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 was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.[6] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[7]

Appellant claimed his counsel was ineffective for rushing him into entering his guilty plea and for failing to fully advise him. Appellant failed to demonstrate that counsel's performance was deficient or prejudiced him. Appellant failed to state any facts in support of these claims.[8] Further, appellant obtained a substantial benefit from the plea; the State agreed not to pursue habitual criminal treatment and to allow appellant to withdraw his plea if the district court sentenced him to a term exceeding twelve to thirty-six months. Accordingly, we conclude the district court did not err in denying this claim.

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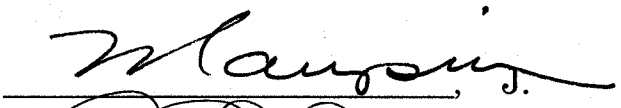
[6]Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

[7]Strickland v. Washington, 466 U.S. 668, 697 (1984).

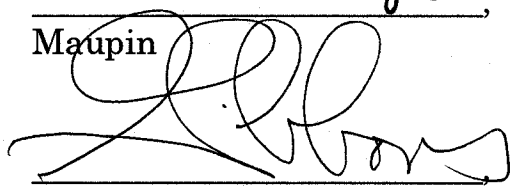
[8]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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.[9] Accordingly, we

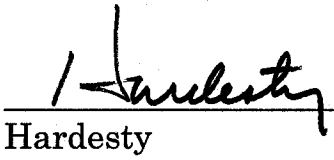
ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Roger E. Timothy
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[9]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).