IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN RAY GRIM A/K/A LYNN RAY GRIMM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46530

FILED

OCT 10 2006

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On February 13, 2003, the district court convicted appellant, pursuant to a guilty plea, of sexual assault of a child. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years have been served. The district court also sentenced appellant to the special sentence of lifetime supervision. This court affirmed appellant's conviction on direct appeal.[1] The remittitur issued on June 29, 2004.

On November 30, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to

[1]Grim v. State, Docket No. 41077 (Order of Affirmance, June 4, 2004).

represent appellant, and counsel filed a supplemental petition. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On November 28, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial 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.[2] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[3]

First, appellant claimed counsel was ineffective for failing to request psychological evaluations of the victim and her family, as well as an additional psychological evaluation of appellant. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. Appellant failed to demonstrate that such requests would have been

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

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

successful. Appellant also failed to state what evidence would have been produced by psychological evaluations that would have prevented him from pleading guilty.[4] Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed counsel was ineffective for failing to ensure appellant was provided with the services of an interpreter. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. Appellant failed to demonstrate that he ever requested an interpreter or that counsel should have known an interpreter was required. Our review of the record on appeal reveals that appellant appeared to hear and respond appropriately and coherently in all transcribed proceedings, including his videotaped interview with detectives investigating the charges. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective for inducing his guilty plea by promising him he would serve only seven years. This claim is belied by the record.[5] At the plea canvass, appellant stated he had not been promised any particular sentence and understood the

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[4]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984)

[5]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

sentence was up to the district court. Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant claimed counsel was ineffective for failing to object to the imposition of lifetime supervision on the ground that lifetime supervision unconstitutionally enhances a defendant's sentence without a jury finding on the facts supporting the enhancement.[6] Appellant failed to demonstrate counsel's performance was deficient. NRS 176.0931 is not a sentencing enhancement that must be decided by a jury or fact-finder, rather it is an automatically-imposed mandatory sentence for commission of various sexual crimes.[7] Accordingly, we conclude the district court did not err in denying this claim.

Sixth, appellant claimed counsel was ineffective for failing to object to the imposition of lifetime supervision on the ground that lifetime supervision unconstitutionally infringes on appellant's right to travel. "[A]n individual's constitutional right to travel, having been legally extinguished by a valid conviction followed by imprisonment, is not revived by the change in status from prisoner to parolee."[8] Similarly,

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[6]See Apprendi v. New Jersey, 530 U.S. 466 (2000); see also Blakely v. Washington, 542 U.S. 296 (2004).

[7]See Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

[8]Bagley v. Harvey, 718 F.2d 921, 924 (9th Cir. 1983).

restrictions on appellant's right to travel while under the special sentence of lifetime supervision are not unconstitutional. Accordingly, we conclude the district court did not err in denying this claim.

Seventh, appellant claimed counsel was ineffective for failing to object to the imposition of lifetime supervision on the ground that lifetime supervision unconstitutionally constitutes double jeopardy. Appellant failed to demonstrate counsel's performance was deficient. Lifetime supervision is a mandatory part of the sentence for enumerated crimes, not a separate sentence, and thus presents no double jeopardy issue. Accordingly, we conclude the district court did not err in denying this claim.

Eighth, appellant claimed counsel was ineffective for advising him to plead guilty to sexual assault in exchange for the State's agreement to dismiss a count of lewdness with a child under the age of fourteen. Specifically, appellant claimed that the two counts were redundant and would have merged. Lewdness and sexual assault are redundant only when they are part of the same act.[9] Our review of the record on appeal reveals that the charges did not encompass the same act, but involved separate and distinct allegations relating to appellant's actions.

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[9]Braunstein v. State, 118 Nev. 68, 79, 40 P.3d 413, 421 (2002) (holding that a conviction for both lewdness and sexual assault would be unlawful if the convictions were based on the same act).

Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed he received ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.[10] Appellate counsel is not required to raise every non-frivolous issue on appeal.[11] This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.[12]

Appellant claimed appellate counsel was ineffective for failing to argue that lifetime supervision is unconstitutional. As stated above, this claim lacked merit, and counsel was not deficient for failing to argue it on direct appeal.

Appellant further claimed that his guilty plea was not knowingly and voluntarily entered. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not

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[10]Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing to Strickland v. Washington, 466 U.S. 668 (1984)).

[11]Jones v. Barnes, 463 U.S. 745, 751 (1983).

[12]Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

entered knowingly and intelligently.[13] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[14] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[15]

Appellant claimed his guilty plea was invalid due to his counsel's ineffectiveness. As stated above, counsel was not ineffective. Appellant also claimed he cannot read and did not understand that he would serve at least twenty years in prison. These claims are belied by the record.[16] At the sentencing hearing, appellant affirmed that he had read and signed a guilty plea memorandum and had not been promised any particular sentence. The guilty plea memorandum appellant signed and the district court's statements at the plea canvass together sufficiently advised appellant that he would spend at least 20 years to life in prison and that he would be potentially subject to restriction for the rest of his life.

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

[14]Hubbard, 110 Nev. at 675, 877 P.2d at 521.

[15]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

[16]See Hargrove, 100 Nev. at 503, 686 P.2d at 225 (holding that a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record).

Appellant also claimed his plea was unknowingly entered because the district court failed to inform him of the requirements for registration as a sex offender pursuant to NRS 176.0927. Appellant failed to demonstrate that he would have sought to withdraw his guilty plea had the district court so informed him. Appellant will only have to register as a sex offender if he ever receives parole from imprisonment, and he was aware that he would be subject to some form of restriction potentially for the rest of his life because of his sentence of lifetime supervision. Our review of the record on appeal reveals that, under the totality of the circumstances, appellant's plea was knowingly and intelligently entered. Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed that the district court erred in denying his motion to suppress statements he made to investigating detectives and denying his motion for a continuance of the trial date. Further, appellant claimed that the State failed to provide him with an interpreter, that his arrest was unlawful, and that the State engaged in a conspiracy to prosecute him. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus where the conviction was based upon a guilty plea.[17]

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[17]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.[18] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Karla K. Butko
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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