

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN SALDANA-VERDIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46771

**FILED**

**SEP 20 2006**

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 appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On April 29, 2003, the district court convicted appellant, pursuant to a guilty plea, of sexual assault of a minor under the age of sixteen. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years has been served. This court affirmed appellant's judgment of conviction on direct appeal.<sup>1</sup> The remittitur issued on January 16, 2004.

On March 16, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On September 22, 2004, with counsel's assistance, appellant filed a supplement to the petition. Pursuant to NRS 34.770, the district court

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<sup>1</sup>Saldana-Verdin v. State, Docket No. 41501 (Order of Affirmance, December 22, 2003).

declined to conduct an evidentiary hearing. On October 13, 2004, the district court dismissed appellant's petition. This court reversed and remanded the appeal to the district court for an evidentiary hearing on appellant's claim alleging that his interpreter did not completely and accurately translate the plea agreement.<sup>2</sup>

On January 26, 2006, the district court conducted an evidentiary hearing. On February 8, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his plea was entered involuntarily and unknowingly. A guilty plea is presumptively valid, and appellant carries the burden of establishing that his plea was not entered knowingly and intelligently.<sup>3</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>4</sup> We will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>5</sup>

First, appellant contended that his translator failed to properly translate the plea agreement and the consequences of his plea.

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<sup>2</sup>Saldana-Verdin v. State, Docket No. 44212 (Order of Reversal and Remand, August 16, 2005).

<sup>3</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

<sup>4</sup>State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

<sup>5</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

Specifically, appellant claimed that the translator failed to inform him of the maximum sentence he was facing, and because of the translator's failure, appellant understood his maximum sentence to be five to twenty years, and thus, resulted in his guilty plea being involuntarily and unknowingly entered.

Appellant failed to demonstrate that his plea was involuntarily or unknowingly entered. Appellant's translator testified during the evidentiary hearing that, although he did not have an independent recollection of translating for appellant, it was his standard practice to read every word in a document to the individual. Additionally, the translator testified that when he serves as an interpreter during change-of-plea hearings, he interprets every word spoken by the Court or the attorneys, and is sworn under oath to carry out that duty. Appellant acknowledged during his plea canvass that he understood the maximum possible term of years he was facing if he pleaded guilty. The plea agreement, which was read to appellant and which appellant signed, stated that the maximum term of imprisonment was life in prison with parole eligibility after a minimum of twenty years had been served. Appellant's mere subjective belief as to his potential sentence, or hope of leniency, unsupported by a promise from State or indication by the court, is insufficient to invalidate his guilty plea as involuntary or unknowing.<sup>6</sup> The totality of the circumstances indicated that appellant entered his

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<sup>6</sup>See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

guilty plea voluntarily and knowingly. Thus, the district court did not err in denying this claim.

Next, appellant claimed that his counsel was ineffective. 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.<sup>7</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>8</sup> A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.<sup>9</sup> Further, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>10</sup>

Appellant claimed that his counsel was ineffective for failing to research and discuss details of his case. Appellant failed to demonstrate that his counsel's performance was ineffective. Bare and

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<sup>7</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>8</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>9</sup>Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

<sup>10</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

naked claims unsupported by any specific factual allegations will not entitle petitioner to relief.<sup>11</sup> Appellant failed to specify what his counsel would have discovered with further research, or what details his counsel did not discuss with appellant. Furthermore, appellant failed to demonstrate that if his counsel had performed differently, appellant would have refused to plead guilty and would have insisted on proceeding to trial. Thus, the district court did not err in denying these claims.

Next, appellant claimed that his counsel was ineffective because he took advantage of appellant's inability to speak the English language and coercing him into pleading guilty. Specifically, appellant claimed that his counsel threatened him with unsupported malicious charges, and informed him that he would spend forty years in prison if he went to trial. Appellant failed to demonstrate that his counsel was ineffective. Appellant was facing additional charges that the State had agreed to move to dismiss if appellant pleaded guilty.<sup>12</sup> Counsel's legal advice about the possible maximum sentence a defendant is facing is not deficient. Thus, the district court did not err in denying this claim.

Next, appellant claimed that the State maliciously overcharged him when the evidence only supported a charge of sexual seduction. This claim is outside the scope of a petition for a writ of habeas

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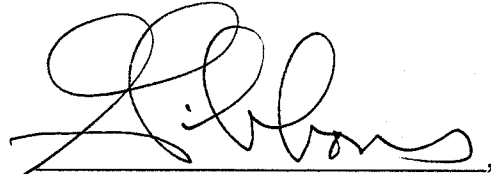
<sup>11</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P. 2d 222, 225 (1984).

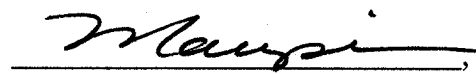
<sup>12</sup>Appellant was facing one count of lewdness with a child under the age of fourteen and two counts of sexual assault on a child.

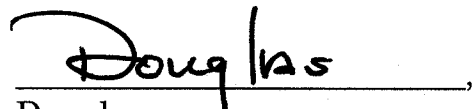
corpus challenging a judgment of conviction based upon a guilty plea.<sup>13</sup> Thus, the district court did not err in denying this claim.

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>14</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Steven R. Kosach, District Judge  
Martin Saldana-Verdin  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>13</sup>NRS 34.810(1)(a).

<sup>14</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).