IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN M. WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46863

FILED

JUL 10 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On December 9, 2004, the district court convicted appellant, pursuant to a guilty plea, of eleven counts of robbery with the use of a deadly weapon, six counts of burglary while in possession of a firearm, and six counts of burglary. The district court sentenced appellant to serve two consecutive terms of 72 to 180 months and three consecutive terms of 26 to 120 months in the Nevada State Prison. The remaining terms were imposed to run concurrently. No direct appeal was taken.

On October 18, 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 March 31, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of counsel.[1] 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]

Appellant claimed that his counsel was ineffective for: (1) failing to provide him with full discovery; (2) advising him to waive his preliminary hearing; and (3) failing to work on the case and telling appellant that he did not want the case because it required too much work. Appellant failed to provide any specific facts in support of these claims.[4] Appellant failed to demonstrate that receipt of further discovery,

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[1]To the extent that appellant raised any of the claims independent from the ineffective assistance of counsel claims, these claims fell outside the scope of claims permitted in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

[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).

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

a preliminary hearing, or further work by his trial counsel would have altered his decision to enter a guilty plea in the instant case. Appellant received a substantial benefit by entry of his guilty plea. By entry of his guilty plea, appellant avoided twenty additional counts, habitual criminal adjudication, and federal charges. Further, appellant bargained that the sentences for counts one through seventeen would run concurrently to one another, thus decreasing the potential time that he faced. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to fully explain the plea agreement. Again, appellant failed to provide any facts in support of this claim.[5] In signing the guilty plea agreement, appellant acknowledged that all of the elements, consequences, rights and waiver of rights had been thoroughly explained to him by his trial counsel. Appellant further acknowledged during the guilty plea canvass that he had read and understood the guilty plea agreement. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to inform him of the sentencing structure or failing to inform him that he could receive a minimum sentence that was up to forty percent of the maximum sentence. Appellant further claimed that he

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[5]See id.

believed he would receive a sentence of two to fifteen years with an equal and consecutive term for each of the robbery counts, a term of two to fifteen years for each of the burglary while in possession of a deadly weapon counts and a term of one to ten years for the burglary counts.[6]

Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The written guilty plea agreement specifically sets forth the sentencing ranges for each count and an advisement that the minimum term could not exceed forty percent of the maximum term. The district court further specifically canvassed appellant about his understanding of the potential sentencing ranges. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[7] Further, as stated above, appellant received a substantial benefit by entry of his guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to require that he have a hearing on whether a pellet gun was a

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[6]Appellant received six to fifteen years with an equal and consecutive term for the robbery with use of a deadly weapon counts, three years and four months to fifteen years for the burglary while in possession of a firearm counts, and a term of two years and two months to ten years for the burglary counts.

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

deadly weapon. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. In entering his guilty plea, appellant admitted that he used a deadly weapon. Thus, the district court was permitted to impose the deadly weapon enhancements in the instant case.[8] Further, NRS 193.165(5)(c) includes as a definition of a deadly weapon a dangerous weapon described in NRS 202.265. NRS 202.265 defines a firearm to include, "[a]ny device from which a metallic projectile, including any ball bearing or pellet, may be expelled by means of spring, gas, air or other force."[9] Thus, a pellet gun may be used to enhance the primary offenses in the instant case. As noted above, appellant received a substantial benefit by entry of his guilty plea, and he failed to demonstrate that he would not have entered a guilty plea in the absence of a hearing on the deadly weapon enhancements. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed his Fourth Amendment rights were violated. By pleading guilty appellant waived any claims relating to the deprivation of constitutional rights that occurred prior to the entry of his

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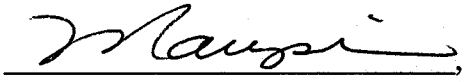
[8]See Blakely v. Washington, 542 U.S. 296, 303 (2004) (stating that precedent makes it clear that the statutory maximum that may be imposed is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant") (emphasis in original).

[9]See NRS 202.265(4)(a)(2).

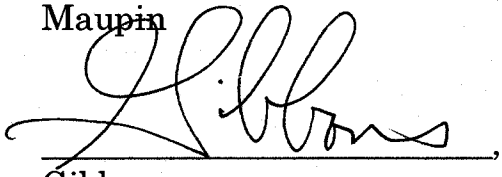
guilty plea.[10] Therefore, we conclude that the district court did not err in denying this claim.

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.[11] Accordingly, we

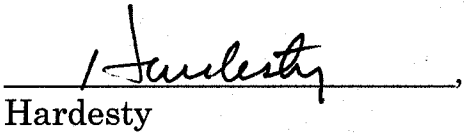
ORDER the judgment of the district court AFFIRMED.



_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Eighth Judicial District Court Dept. 16, District Judge
Brian M. Wilson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[10]Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

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