

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY LEWIS,
Appellant,
vs.
WARDEN, LOVELOCK
CORRECTIONAL CENTER, JACK
PALMER,
Respondent.

No. 47043

FILED

APR 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from the order of the district court denying appellant Gregory Lewis's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; Michael R. Griffin, Judge.

The district court convicted Lewis, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen years. The district court sentenced Lewis to serve a term of life in prison with the possibility of parole after ten years. We affirmed the judgment of conviction on direct appeal.¹

Lewis filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Lewis, and counsel supplemented Lewis's petition. The State opposed the petition, Lewis responded to the opposition, and the district court denied the petition. This appeal follows.

¹Lewis v. State, Docket No. 38641 (Order of Affirmance, October 1, 2002).

First, Lewis contends that the district court erred by finding his guilty plea was made knowingly, intelligently, and voluntarily. Lewis claims that the district court's oral canvass was inadequate because it did not (1) explain the potential sentencing options, (2) inform him that probation was discretionary even "if he passed the psychological evaluation and was determined not to be a danger to the community," (3) determine whether there was a factual basis for his plea, (4) ensure that he understood the elements of the offense, and (5) notify him of the NRS 213.1214 certification requirements.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.² Accordingly, we will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³ In determining the validity of a guilty plea, we look to the totality of the circumstances.⁴ Under this test, a district court's failure to conduct a complete plea canvass "will not invalidate a plea where a totality of the circumstances demonstrates that the plea was freely, knowingly, and voluntarily made."⁵

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

³Hubbard, 110 Nev. at 675, 877 P.2d at 521.

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

⁵Freese, 116 Nev. at 1104, 13 P.3d at 447.

In the written plea agreement, Lewis agreed to plead guilty to lewdness with a child under fourteen years of age. Lewis acknowledged that he must be evaluated by a licensed psychologist before he could be considered for probation or parole, and that as a consequence of his plea he may be imprisoned for life with the possibility of parole after ten years. Lewis asserted that he had not been promised or guaranteed any particular sentence and that he understood that the district court was not obligated to accept sentencing recommendations. Lewis further acknowledged that he and his attorney had discussed the elements of the original charges, possible defenses, defense strategies, and the consequences of entering into a guilty plea agreement; and he agreed that the plea bargain was in his best interest and that he had signed the agreement voluntarily.

During the district court's oral plea canvass, the district court informed Lewis of the charge, the maximum possible sentence, the psychologist certification requirement for parole or probation, the lifetime supervision requirement, and the rights that he would forfeit by pleading guilty. Lewis asserted that he understood the written plea agreement and acknowledged that the State agreed to dismiss all other charges arising from the incident and not file new charges, both parties were free to argue for an appropriate sentence, and no other promises were made. Lewis understood that he was charged with engaging in an inappropriate sexual activity with a child under fourteen years of age, and he stated that charge was true.

We note that the district court was not required to inform Lewis of the NRS 213.1214 panel certification requirement for parole because parole is a collateral consequence of Lewis's plea,⁶ and we conclude from the totality of the circumstances that Lewis has failed to meet his burden of demonstrating that his plea was not entered knowingly, intelligently, and voluntarily.

Second, Lewis contends that the district court erred when it found that trial counsel had provided effective assistance. Lewis claims that trial counsel was ineffective for failing to (1) ensure that he was properly canvassed, (2) inform him that there was no reasonable possibility of probation, (3) require a preliminary hearing to explore what had happened, (4) object to the district court's failure to establish a factual basis before accepting his plea, and (5) notify him of the NRS 213.1214 certification requirements.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.⁷ To show prejudice, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would

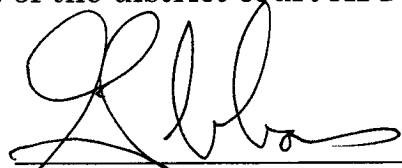
⁶See Palmer v. State, 118 Nev. 823, 830, 59 P.3d 1192, 1196 (2002); Anushevitv v. Warden, 86 Nev. 191, 194, 467 P.2d 115, 118 (1970).

⁷Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).


have insisted on going to trial."⁸ The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.⁹ Here, the district court found that Lewis received effective assistance of counsel. Our review of the record reveals that the district court's finding is supported by substantial evidence and is not clearly wrong.

Having considered Lewis's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. James Todd Russell, District Judge
Kummer Kaempfer Bonner Renshaw & Ferrario/Carson City
Attorney General Catherine Cortez Masto/Carson City
Carson City District Attorney
Carson City Clerk

⁸Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁹See Strickland, 466 U.S. at 697.