

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION NICHOLSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47182

FILED

JUL 28 2006

By *[Signature]*
JANET M. BLOOM
CLERK OF SUPREME COURT
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; Michelle Leavitt, Judge.

On December 14, 2004, the district court convicted appellant, pursuant to a guilty plea, of attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 96 to 240 months in the Nevada State Prison. This court affirmed appellant's judgment of conviction on direct appeal.¹ The remittitur issued on May 6, 2005.

On January 26, 2006, 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 April 20, 2006, the district court denied appellant's petition. This appeal followed.

¹Nicholson v. State, Docket No. 44461 (Order of Affirmance, April 11, 2005).

In his petition, appellant contended that his trial counsel was ineffective.² 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.³ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁴ A guilty plea is presumptively valid, and appellant carries the burden of establishing that the plea was not entered knowingly and intelligently.⁵ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁶ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁷

²To the extent that appellant raised any of the following issues independently from his ineffective assistance of counsel claims, we conclude that they fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

³Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁴Strickland v. Washington, 468 U.S. 668, 697 (1984).

⁵Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁶State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁷Hubbard, 110 Nev. at 675, 877 P.2d at 521.

First, appellant claimed that his trial counsel was ineffective for failing to investigate or object to the State's "trial tactics" during the plea agreement. Appellant failed to demonstrate that counsel's performance was deficient. Appellant failed to indicate what counsel should have investigated or what counsel should have objected to, or if counsel had investigated and objected, that appellant would have refused to plead guilty and would have insisted on going to trial. Bare and naked claims unsupported by any specific factual allegations will not entitle defendant to relief.⁸ Thus, the district court did not err in denying these claims.

Second, appellant claimed that his counsel misinformed him regarding the sentence that he would get if he pleaded guilty, resulting in appellant entering his plea unknowingly and involuntarily. Specifically, appellant claimed that his counsel wrongly informed him that he was eligible for probation, informed him that he would probably get probation and that, if he proceeded to trial, appellant would probably be bound over and convicted on all of the charges that the State was bringing against him.

Based on our review of the record on appeal, we conclude that appellant failed to demonstrate that counsel's advice led to appellant entering his plea involuntarily or unknowingly. Counsel's candid advice about the maximum possible sentence upon trial is not deficient. Appellant was eligible for probation;⁹ however, the district court was presented with various factors during the sentencing of appellant,

⁸See Hargrove v. State, 100 Nev. 498, 502, 686 P. 2d 222, 225 (1984).

⁹See NRS 176A.100; NRS 193.165(4).

including the severity of the crime and appellant's prior dishonorable discharges from probation. Appellant was thoroughly canvassed when he entered his plea, including his understanding of the possible sentence and the district court's discretion at sentencing. The plea agreement, which appellant stated he read and signed, stated that his sentence would be determined within the discretion of the judge, that he was pleading guilty voluntarily, and was not acting under duress or coercion or by virtue of any promises of leniency. Moreover, appellant received a substantial benefit by pleading guilty to one charge of attempted murder with the use of a deadly weapon, rather than facing the possibility of a conviction of all charged counts.¹⁰ 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.¹¹ Accordingly, we conclude that, from the totality of the circumstances, appellant failed to demonstrate that his counsel was ineffective or that his guilty plea was entered involuntarily or unknowingly. Thus, the district court did not err in denying this claim.

Appellant next claimed that the district court erred in accepting his guilty plea and that the State prejudiced the plea canvass by coercing appellant to admit an intention to murder. Appellant's claim that the district court erred by accepting his guilty plea was considered and rejected on direct appeal. The doctrine of the law of the case prevents

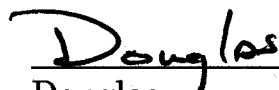
¹⁰Appellant was charged by complaint with ten counts of attempted murder with the use of a deadly weapon, discharging a firearm at or into a structure, vehicle, aircraft or watercraft, and possession of a firearm by an ex-felon.


¹¹See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

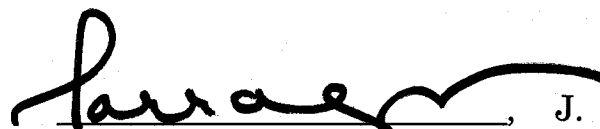
further litigation of claims previously considered and rejected by this court.¹² Further, appellant's claim that the State committed misconduct in prejudicing his plea is outside the scope of a petition for a writ of habeas corpus based on a guilty plea.¹³ Thus, the district court did not err in denying these claims.

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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁵


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹²See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

¹³See NRS 34.810(1)(a).

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁵We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Michelle Leavitt, District Judge
Darion Nicholson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk