

IN THE SUPREME COURT OF THE STATE OF NEVADA

DWAYNE J. CLARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47209

FILED

AUG 22 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. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On February 24, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault and one count of sexual assault of a minor under sixteen years of age. The district court sentenced appellant to serve a term of 10 to 25 years in the Nevada State Prison for the sexual assault and a concurrent term of 5 to 20 years for the sexual assault of a minor. Appellant did not file a direct appeal.

On December 2, 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 27, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his counsel was ineffective.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 A guilty plea is presumptively valid, and appellant carries the burden of establishing that the plea was not entered knowingly and intelligently.⁴ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁵ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁶

¹To 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).

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

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

⁴Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁵State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁶Hubbard, 110 Nev. at 675, 877 P.2d at 521.

First, appellant claimed that his counsel was ineffective for coercing him into taking an unfavorable plea deal when there was no physical evidence of sexual assault. Appellant failed to demonstrate that his counsel's performance was ineffective. Appellant did not specify how his attorney coerced him. Bare or naked allegations unsupported by specific facts are insufficient to grant relief.⁷ Appellant failed to demonstrate that he was prejudiced by counsel's performance. The victim would have testified that appellant fondled and penetrated her on more than one occasion.⁸ Appellant made incriminating statements while being questioned by the police. Appellant admitted to the offenses during his plea canvass. Thus, the district court did not err in denying this claim.

Second, appellant claimed that his counsel was ineffective for failing to ensure that appellant was mentally competent during his guilty plea entry, and thus his plea was involuntarily and unknowingly entered. Specifically, appellant claimed that, due to lack of education and because he was on prescription medication, appellant was unable to understand the proceedings.

Appellant failed to demonstrate that his counsel was ineffective or that his plea was involuntarily or unknowingly entered. Counsel stated during the plea canvass that because of appellant's third-grade education, he had spent time with appellant, read the plea agreement to him and explained it to him in "excruciating detail." The

⁷Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

⁸Nordine v. State, 95 Nev. 425, 426, 596 P.2d 245, 246 (1979) (holding that the victim's testimony, if believed by the jury, is enough to establish a sexual assault, and it "need not be corroborated in order for the conviction to stand").

district court canvassed appellant on his understanding of the charges and the plea agreement, and appellant agreed that he was entering his guilty plea freely and voluntarily. The district court specifically questioned appellant regarding his understanding of the district court's discretion, and then sentenced appellant to the sentence stipulated to by appellant and the State. It is not apparent from the record that appellant was impaired or that he did not understand the district court's questions, and he answered all the questions appropriately. The guilty plea agreement, which was read to and signed by appellant, stated that he was not under the influence of any controlled substance or other drug which would in any manner impair his ability to comprehend or understand the agreement or proceedings. Thus, the district court did not err in denying this claim.

Next, appellant claimed that the State breached the plea agreement. This claim is belied by the record.⁹ Appellant was sentenced to the terms stipulated to in the plea agreement and discussed in court. Thus, the district court did not err in denying this claim.

Appellant additionally claimed that investigators coerced him to confess without an attorney present, he should have had a psychosexual evaluation in order to allow him possible probation because there was no evidence of penetration, and the sexual assault count should have been dismissed due to lack of evidence.¹⁰ These claims are beyond the scope of

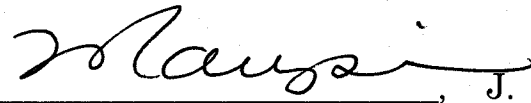
⁹See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

¹⁰Appellant was originally charged with sexual assault with a minor under the age of sixteen and lewdness with a minor under the age of fourteen.

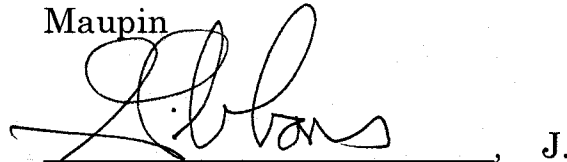
a petition for a writ of habeas corpus when the conviction is based upon a guilty plea.¹¹ Thus, the district court did not err in denying these claims.

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.¹² Accordingly, we

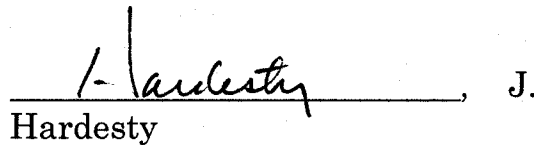
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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

¹¹NRS 34.810(1)(a).

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).