IN THE SUPREME COURT OF THE STATE OF NEVADA

CURTIS AVERY VANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47286

FILED

AUG 17 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 dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On July 2, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen and two counts of statutory sexual seduction. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years have been served and two terms of 24 to 60 months for statutory sexual seduction, with all the terms to run concurrently. This court affirmed the judgment of conviction on direct appeal.[1] The remittitur issued on May 20, 2005.

On October 13, 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

[1]Vanderson v. State, Docket No. 43678 (Order of Affirmance, April 25, 2005).

conduct an evidentiary hearing. On April 10, 2006, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. 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]

First, appellant claimed counsel was ineffective for failing to investigate the charges and for allowing him to plead guilty without investigating the charges. Appellant claimed investigation would have established that the two victims, twelve-year-old D.G. and fourteen-year-old A.H., consented to the sexual contact. Appellant failed to demonstrate that counsel's performance was deficient or prejudiced him. Consent is not a defense to either lewdness with a child under the age of fourteen[4] or

---

[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 NRS 201.230; see also State v. Koseck, 113 Nev. 477, 479, 936 P.2d 836, 838 (1997).

statutory sexual seduction.[5] Accordingly, the district court did not err in dismissing this claim.

Second, appellant claimed counsel was ineffective for failing to present mitigating evidence at sentencing. Specifically, appellant claimed counsel should have called the victim of the lewdness charge, D.G., to testify that the sexual contact with appellant was consensual. Along with his petition, appellant submitted an affidavit from D.G. in which she claimed the sexual contact was consensual. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. Although consent is not a defense to lewdness with a child under the age of fourteen or statutory sexual seduction, at the sentencing hearing, both counsel and appellant's mother intimated that the victims initiated the sexual contact with appellant.

Further, as the State noted at sentencing, the victims were twelve- and fourteen-years-old at the time of the incidents and appellant was more than thirty. Appellant admitted to having oral and vaginal intercourse with fourteen-year-old A.H. on approximately four occasions. Appellant also admitted to having oral and vaginal intercourse with twelve-year-old D.G. on approximately twelve occasions. Before he was arrested on these charges, appellant was in jail on other charges; recorded jail telephone calls revealed appellant telephoned D.G numerous times and discussed past and future sexual contacts with her as well as with A.H., including his fear that he may have impregnated A.H. Appellant had four prior felony convictions and two prior misdemeanor convictions,

---

[5]See NRS 200.364(3).

including one for domestic battery, and was on parole when he committed the instant offenses. In addition, the district court did not sentence appellant to the maximum time possible. On the lewdness charge, the district court sentenced appellant in accordance with the Department of Parole and Probation's recommendation; on the statutory sexual seduction counts, the district court departed from the Department's recommendation that the sentences be run concurrently to each other but consecutively to the sentence on the lewdness count, and ordered all the sentences to run concurrently. Accordingly, the district court did not err in dismissing this claim.

Third, appellant claimed counsel was ineffective at sentencing for failing to indicate to the district court that appellant's psychosexual evaluation concluded appellant was not a high risk to reoffend. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. The district court had the report and there is no indication in the record that the district court did not read the report. Further, the district court did not sentence appellant to the maximum time possible. Accordingly, the district court did not err in dismissing this claim.

Fourth, appellant claimed counsel was ineffective for failing to explain the possible sentences to him. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. The guilty plea agreement signed by appellant indicated the correct sentencing ranges. At the plea entry hearing, appellant informed the district court that he had read the plea agreement and understood it. Appellant also claimed counsel failed to explain lifetime supervision to him. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. A

defendant need not be informed of the specific conditions of lifetime supervision at entry of the plea because these conditions are not determined until after a hearing just prior to expiration of a sex offender's term of imprisonment, parole, or probation.[6] Accordingly, the district court did not err in dismissing this claim.

Fifth, appellant claimed counsel was ineffective for telling him he would get probation if he pleaded guilty. This claim is belied by the record.[7] At the plea entry hearing, appellant assured the district court he had not been promised anything by anyone in exchange for his guilty plea. Appellant also stated that he understood the sentence was at the district court's discretion, and that even if appellant was certified as not a high risk to reoffend, the district court could still sentence him to prison. Accordingly, the district court did not err in dismissing this claim.

Sixth, appellant claimed counsel was ineffective for failing to request probation at appellant's sentencing. Appellant failed to demonstrate that counsel's performance was deficient or prejudiced him. Based on appellant's admissions at the plea canvass and his prior record, as stated above, it is unlikely that a request for probation would have been successful. Accordingly, the district court did not err in dismissing this claim.

Appellant also contended his guilty plea was not knowingly and intelligently entered. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered

---

[6]See NRS 213.1243(1); NAC 213.290; see also Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

[7]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

knowingly and intelligently.[8] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[9] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[10]

Appellant contended his plea was invalid due to the district court's insufficient guilty plea canvass, which failed to explain the details of lifetime supervision. A defendant need not be informed of the specific conditions of lifetime supervision at entry of the plea because these conditions are not determined until after a hearing just prior to expiration of a sex offender's term of imprisonment, parole, or probation.[11] Accordingly, the district court did not err in dismissing this claim.

Appellant also claimed counsel's ineffectiveness rendered his guilty plea invalid. As stated above, counsel was not ineffective. Accordingly, the district court did not err in dismissing this claim.

Appellant also claimed the district court abused its discretion at sentencing. This court has previously ruled that appellant's sentence was not an abuse of the sentencing court's discretion.[12] Relitigation of

---

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

[9]Hubbard, 110 Nev. at 675, 877 P.2d at 521.

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

[11]See NRS 213.1243(1); NAC 213.290; see also Palmer, 118 Nev. at 827, 59 P.3d at 1194-95.

[12]Vanderson v. State, Docket No. 43678 (Order of Affirmance, April 25, 2005).

this claim is barred by the law of the case.[13] Accordingly, the district court did not err in dismissing this claim.

Finally, appellant claimed appellate counsel was ineffective for failing to argue appellant's federal constitutional claims. Appellant failed to specify what federal constitutional claims counsel should have argued[14] or to demonstrate that any federal constitutional claim had a reasonable probability of success on appeal.[15] Accordingly, the district court did not err in dismissing 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.[16] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

---

[13]See Pellegrini v. State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

[14]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[15]See Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

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

cc: Hon. Robert H. Perry, District Judge
Curtis Avery Vanderson
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk