IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LEE TRUJILLO A/K/A JAMES LEE TRUJILLO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47325

FILED

SEP 12 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Rubalcaba
CHIEF 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. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On October 19, 2005, the district court convicted appellant, pursuant to a plea of no contest,[1] of first-degree kidnapping and luring a child. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after five years have been served for first-degree kidnapping, and a concurrent term of 60 to 180 months for luring a child. The district court determined the kidnapping was sexually motivated and sentenced appellant to the special sentence of lifetime supervision. No direct appeal was taken.

On March 15, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint

[1]See State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996) (holding that "[a] plea of nolo contendere does not expressly admit guilt but nevertheless authorizes a court to treat the defendant as if he or she were guilty").

counsel to represent appellant or to conduct an evidentiary hearing. On May 4, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his no contest plea was invalid.[2] A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[3] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[4] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[5]

First, appellant claimed his plea was invalid because he was taking psychotropic medications when he entered the plea. Appellant failed to state what medications he was taking or how they affected his ability to enter a valid plea.[6] In fact, at the plea entry hearing, appellant assured the court he was not taking any medications that would affect his ability to understand the proceedings. Accordingly, we conclude the district court did not err in denying this claim.

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[2]See id.

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

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

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

[6]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding a petitioner is not entitled to an evidentiary hearing on "bare" or "naked" claims for relief that are unsupported by any specific factual allegations).

Second, appellant claimed his plea was invalid because the district court failed to canvass him on the "true nature and consequences" of lifetime supervision. A defendant need not be informed of the specific conditions of lifetime supervision at entry of a guilty 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.[7] Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed the district court erred by failing to sua sponte initiate proceedings to assess appellant's competency. By pleading no contest, appellate waived the right to challenge events preceding the plea.[8] Further, appellant failed to demonstrate that any doubt as to appellant's competency entered the district court's mind before entry of the plea.[9] Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant claimed he did not waive his right to a preliminary hearing. By pleading no contest, appellate waived the right to challenge events preceding the plea.[10] Accordingly, we conclude the district court did not err in denying this claim.

Fifth, appellant claimed his conviction violated double jeopardy because luring a child is an element of first-degree kidnapping. We conclude this claim lacked merit. "The Double Jeopardy Clause of the

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

[8]See Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984).

[9]See NRS 178.405.

[10]See Lyons, 100 Nev. at 432, 683 P.2d at 505.

United States Constitution protects defendants from multiple punishments for the same offense."[11] "This court utilizes the test set forth in Blockburger v. United States to determine whether multiple convictions for the same act or transaction are permissible."[12] "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not."[13] Appellant's two charges were based on separate acts. The luring charge was supported by the initial communication with A.R, while the kidnapping charge was supported by appellant leading A.R. by the hand around a corner and telling her to wait for him. Second, first-degree kidnapping and luring a child each require proof of a fact that the other lacks. Luring a child requires contact or communication with a person under the age of sixteen with the intent to persuade, lure or transport the child away from his home,[14] while first-degree kidnapping requires the victim be moved or confined in some way for the purpose of some nefarious act.[15] Therefore no double jeopardy violation was present in this case. Accordingly, we conclude the district court did not err in denying this claim.

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[11]Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (citing Williams v. State, 118 Nev. 536, 548, 50 P.3d 1116, 1124 (2002).

[12]Id. (footnote omitted).

[13]Blockburger v. United States, 284 U.S. 299, 304 (1932).

[14]See NRS 201.560(1).

[15]See NRS 200.310(1).

Sixth, appellant claimed lifetime supervision is unconstitutional because it constitutes a bill of attainer, is vague and ambiguous, is arbitrarily and discriminatorily enforced, violates the First Amendment, violates the Fourth Amendment, and violates Apprendi v. New Jersey.[16] These claims were not properly brought in a post-conviction petition for a writ of habeas corpus where the conviction is based upon a no contest plea.[17]

Appellant also claimed 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.[18] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[19]

First, appellant claimed counsel was ineffective for failing to investigate. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. Appellant failed to state what such an investigation would have uncovered or demonstrate that such an

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[16]530 U.S. 466 (2000). Appellant did not raise these claims in the context of ineffective assistance of counsel claims. Although appellant may certainly do so in a subsequent petition, we express no view as to whether he can overcome the relevant procedural bars to such a petition.

[17]See NRS 34.810(1)(a).

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

[19]Strickland v. Washington, 466 U.S. 668, 697 (1984).

investigation would have convinced appellant to insist on going to trial. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed counsel was ineffective for failing to interview witnesses and the victim. Appellant failed to demonstrate counsel's performance was deficient or prejudiced him. Appellant failed to state what witnesses counsel should have interviewed or that those witnesses, and the victim, would even have been willing to be interviewed. Appellant failed to demonstrate such interviews would have convinced appellant to insist on going to trial. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective for failing to advise appellant on defense strategy. This claim is belied by the record.[20] Appellant's plea memorandum affirmed that he had discussed all possible defense strategies with his counsel. Appellant failed to demonstrate that further discussion with his counsel about defense strategy would have convinced him to insist on going to trial. Accordingly, we conclude the district court did not err in denying this claim.

Fourth, appellant claimed counsel was ineffective for failing to prepare for trial. Appellant failed to demonstrate counsel's performance was deficient. Our review of the record on appeal demonstrates that appellant pleaded no contest on the day of his arraignment. Counsel was not deficient for failing to prepare for trial at this stage. Accordingly, we conclude the district court did not err in denying this claim.

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[20]See Hargrove, 100 Nev. at 503, 686 P.2d at 225 (holding that a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record).

Fifth, appellant claimed counsel was ineffective for failing to initiate competency proceedings. Appellant failed to state any facts to demonstrate that his competency was in doubt, or that counsel knew or should have known that appellant's competency was in doubt.[21] Accordingly, we conclude the district court did not err in denying this claim.

Sixth, appellant claimed counsel was ineffective for failing to advise him of his right to appeal. Appellant failed to demonstrate counsel's performance was deficient. There is no absolute duty to advise a defendant of the right to appeal when the conviction results from a no contest plea.[22] The obligation to advise a client convicted pursuant to a no contest plea of his right to appeal may arise under certain circumstances, such as when the client inquires about an appeal, or when the advice may benefit the client, such as when there exists a direct appeal claim that has a reasonable likelihood of success.[23] Appellant failed to demonstrate that he inquired about an appeal or that a potentially successful direct appeal claim existed. Accordingly, we conclude the district court did not err in denying this claim.

Seventh, appellant contended counsel was ineffective for failing to advise him of the nature and consequences of lifetime supervision. Appellant failed to demonstrate counsel's performance was deficient. The nature and consequences of lifetime supervision are not determined until after a hearing just prior to expiration of a sex offender's

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[21]See id. at 502, 686 P.2d at 225.

[22]See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

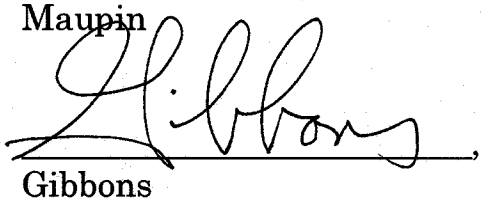
[23]See id.

term of imprisonment, parole, or probation.[24] Accordingly, we conclude the district court did not err in denying this claim.

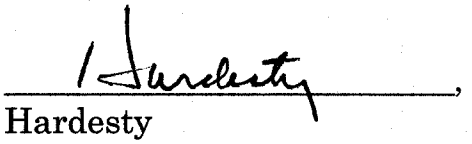
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[25] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

cc: Hon. Brent T. Adams, District Judge
James Lee Trujillo
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

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