IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL REYES-CARREON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47373

FILED

NOV 15 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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On May 2, 2005, the district court convicted appellant, pursuant to a guilty plea, of second degree murder and burglary. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for the murder count and a consecutive term of four to ten years for the burglary count. No direct appeal was taken.

On December 27, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus, and on February 8, 2006, appellant filed a supplement to the petition. The State opposed the petition. The district court appointed counsel to assist appellant, but counsel did not file any documents in the district court. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On May 1, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first claimed that his trial counsel was ineffective for failing to advise him about the right to a direct appeal.

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Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The written guilty plea agreement, which appellant acknowledged was read to him in Spanish, informed appellant of his limited right to a direct appeal.[1] Moreover, there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.[2] Appellant did not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his guilty plea was not entered knowingly and voluntarily. 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

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[1]See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

[2]See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

[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).

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 that his guilty plea was not entered knowingly and voluntarily because the district court failed to personally canvass appellant about his education and understanding of the process. Appellant complained that he had only a sixth grade education in Mexico and that he did not speak, write or understand English. Appellant claimed that if the district court had canvassed him about his education and understanding of the proceedings that the district court would have discovered that appellant did not understand the terms "malice aforethought" and "consecutive" and that appellant did not understand the waiver of constitutional rights. Appellant claimed that pursuant to this court's decision in Crawford v. State,[6] the district court may not rely on the written guilty plea agreement as evidence of a knowing and voluntary plea.

Appellant failed to demonstrate that his guilty plea was entered unknowingly and involuntarily. In signing the guilty plea agreement, appellant acknowledged that the elements of the crimes, the consequences of his guilty plea and the waiver of constitutional rights had been explained to him thoroughly by his attorney. Pursuant to the plea negotiations, appellant stipulated to consecutive time between the counts;

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[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]117 Nev. 718, 30 P.3d 1123 (2001).

the stipulation was set forth in both the written guilty plea agreement and during the plea canvass. During the plea canvass, appellant affirmatively acknowledged that he was waiving the six constitutional rights listed in the guilty plea agreement. Appellant acknowledged during the guilty plea canvass that the written guilty plea agreement was read to him in Spanish. Further, appellant affirmatively acknowledged during the guilty plea canvass that he understood the guilty plea agreement as read to him. Appellant's reliance upon Crawford was misplaced as Crawford does not state that a written guilty plea agreement may never be examined to determine whether a guilty plea was validly entered; rather, Crawford stands for the proposition that where a term relating to the guilty plea agreement is set forth in the plea canvass, but not in the written guilty plea agreement, the written guilty plea agreement may not serve as evidence of a knowing and voluntary plea when the newly added term is not followed.[7] Under these facts, appellant failed to demonstrate that any language or educational barrier prevented him from entering a knowing and voluntary guilty plea, and therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his guilty plea was not entered knowingly and voluntarily because his trial counsel told his interpreter to tell him how to respond to the questions during the plea canvass. Appellant failed to carry his burden of demonstrating that his guilty plea was invalid because of this alleged error. Appellant's claim is without

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[7]Id. at 724-25, 30 P.3d at 1127.

factual support in the record on appeal.[8] Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his guilty plea was not entered knowingly and voluntarily because the district court failed to personally canvass him about the elements of second degree murder and burglary. Appellant claimed that he never made a factual admission to second degree murder as he informed the district court that the victim had attacked him. Appellant further claimed that he did not make a factual admission to burglary because he did not admit to the intent element. Appellant claimed that he was unaware that the victim was in his wife's residence when he entered. Appellant claimed that he was badgered into admitting that he had intended to enter his wife's residence with the intent to harm the victim.

Appellant failed to carry his burden of demonstrating that his guilty plea was invalid. The totality of the circumstances demonstrates that appellant understood the elements of the crimes and knowingly admitted to the facts supporting the crimes. Pursuant to the written guilty plea agreement, appellant admitted the facts which support all the elements of the crimes as set forth in the attached amended information. As stated earlier, in signing his guilty plea agreement, appellant acknowledged that his trial counsel had explained the elements of the offenses to him. Further, in signing his guilty plea agreement, appellant acknowledged that his trial counsel had discussed possible defenses with appellant. During the guilty plea canvass, appellant's trial counsel

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

informed the district court that the defense of self-defense had been discussed, but appellant was entering his guilty plea to reduce his potential sentence.[9] During the guilty plea canvass, appellant expressly admitted that he stabbed the victim with malice aforethought. Further, although appellant initially hesitated in admitting that he entered his wife's residence with the intent to harm the victim, appellant admitted "I went inside with the intention of finding him there" and that he then stabbed the victim. The record does not support appellant's claim that he was badgered into making any factual admissions.[10] Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his guilty plea was not entered voluntarily as it was the product of coercion. Appellant claimed that his trial counsel failed to investigate his theory of self-defense. Appellant further claimed that his trial counsel coerced his guilty plea by informing him that he would receive the death penalty and never see his family again.

Appellant failed to carry his burden of demonstrating that his guilty plea was coerced. In the written guilty plea agreement and during the plea canvass, appellant acknowledged that his guilty plea was not the product of threats. Appellant's claim that his trial counsel failed to

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[9]Appellant was originally charged with open murder. In the justice court, the State filed a notice to reserve its right to file a notice of intent to seek the death penalty.

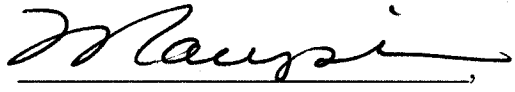
[10]But see Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994) (determining that a guilty plea was not voluntary where extensive coaching by the parties and the district court occurred during the guilty plea canvass). Extensive coaching did not occur in the instant case.

investigate his theory of self-defense is belied as trial counsel specifically informed the district court during the plea canvass that he had discussed the issue of self-defense with appellant. Trial counsel's candid advice about the maximum potential penalty is not ineffective.[11] Therefore, we conclude that the district court did not err in denying this claim.

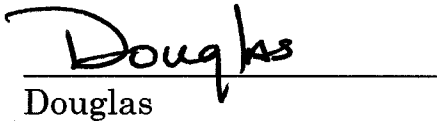
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[12] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Gibbons



_____, J.
Maupin



_____, J.
Douglas

cc: Hon. Stewart L. Bell, District Judge
Miguel Reyes-Carreon
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[11]As noted earlier, the State had filed a notice to reserve the right to file a notice of intention to seek the death penalty.

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