

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT L. BUTTERFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47461

FILED

SEP 20 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. Bloom*
CHIEF DEPUTY CLERK

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; Jackie Glass, Judge.

On January 14, 2005, the district court convicted appellant, pursuant to an Alford¹ plea, of two counts sexual assault on a minor under the age of sixteen and one count of attempted sexual assault on a minor under the age of fourteen. The district court sentenced appellant to serve consecutive terms totaling eighteen to sixty years in the Nevada State Prison. The district court further imposed the special sentence of lifetime supervision. This court affirmed the judgment of conviction on direct appeal.² The remittitur issued on August 23, 2005.

On April 14, 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

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Butterfield v. State, Docket No. 44724 (Order of Affirmance, July 29, 2005).

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 5, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised several claims of ineffective assistance of counsel.³ 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.⁴ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁵

First, appellant claimed that his trial counsel failed to investigate facts, interview witnesses, advise appellant of the defense strategy and prepare for trial. Appellant failed to set forth what facts were not investigated, what witnesses should have been interviewed, what defense strategies should have been discussed and what further preparations should have been conducted or how further investigation and preparation would have altered his decision to enter a guilty plea. Thus,

³To the extent that appellant raised any claims independently from claims of ineffective assistance of counsel or claims challenging the validity of the plea, those claims fell outside the scope of claims permissible in a petition challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

⁴Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁵Strickland v. Washington, 466 U.S. 668, 697 (1984).

the district court did not err in denying these claims as appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced.

Second, appellant claimed that his trial counsel informed the district attorney of his alibi for the dates set forth in the criminal complaint and that this information allowed the district attorney to alter the dates at the preliminary hearing. Appellant claimed that he was actually innocent and that his attorney failed to adequately investigate his claim of innocence. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's claim that his trial counsel informed the district attorney about his alibi is based upon mere speculation without any support in the record on appeal. The record reveals that the district attorney moved to amend the time span in the criminal complaint to correspond with the testimony of the victim at the preliminary hearing. Appellant failed to indicate what further investigation should have been performed in this regard and how this investigation would have altered his decision to enter a guilty plea. Appellant's Alford plea signified that he maintained his innocence, but that he believed it was in his best interests to enter a plea.⁶ Appellant received a substantial benefit by entry of his guilty plea in the instant

⁶We note that this court has previously recognized that a claim of innocence is "essentially academic" where a defendant enters a plea pursuant to Alford. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 226 (1984). Appellant failed to demonstrate that he was actually innocent in the instant case. See Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001); Mazzan v. Warden, 112 Nev. 838, 921 P.2d 920 (1996); see also Bousley v. United States, 523 U. S. 614 (1998).

case. Appellant was originally charged with five counts of sexual assault on a minor under the age of fourteen and four counts of lewdness with a minor under the age of fourteen. A conviction on the original charges may have resulted in the imposition of multiple life sentences.⁷ However, appellant entered into negotiations whereby he stipulated to sentences of five to twenty years on each of the sexual assault counts and the parties were free to argue on the attempted sexual assault count. Appellant's potential liability was significantly reduced by his guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for waiving his right to a speedy trial without his authorization. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record reveals that appellant's trial counsel sought continuances of the trial date in order to prosecute pre-trial motions and prepare for the trial. Trial counsel reasonably sought to continue the trial in order to pursue the pre-trial motions, some of which dealt with evidence and discovery matters. Appellant failed to demonstrate that he was prejudiced by the continuances. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to file a presentence motion to withdraw a guilty plea. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to set forth the grounds of the presentence motion and demonstrate that such a motion

⁷See NRS 200.366(3)(c); NRS 201.230(2).

would have provided a reason that was fair and just to permit withdrawal of the guilty plea.⁸ Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to inform him about the precise conditions that could be imposed in the special sentence of lifetime supervision. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The particular conditions of lifetime supervision are tailored to each individual case and, notably, are not determined until after a hearing is conducted just prior to the expiration of the sex offender's completion of a term of parole or probation, or release from custody.⁹ Thus, all that is constitutionally required is that the totality of the circumstances demonstrate that a petitioner was aware that he would be subject to the consequence of lifetime supervision before entry of the plea and not the precise conditions of lifetime supervision.¹⁰ Here, appellant was informed in the written guilty plea agreement and in the guilty plea canvass that he was subject to the special sentence of lifetime

⁸See Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001); Woods v. State, 114 Nev. 468, 958 P.2d 91 (1998); State v. District Court, 85 Nev. 381, 455 P.2d 923 (1969).

⁹See NRS 213.1243(1); NAC 213.290.

¹⁰Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002). We note that in Palmer this court recognized that under Nevada's statutory scheme, a defendant is provided with written notice and an explanation of the specific conditions of lifetime supervision that apply to him "[b]efore the expiration of a term of imprisonment, parole or probation." Id. at 827, 59 P.3d at 1194-95 (emphasis added).

supervision. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that he received ineffective assistance of appellate counsel. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.¹¹ Appellate counsel is not required to raise every non-frivolous issue on appeal.¹² This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.¹³

Appellant claimed that his appellate counsel was ineffective for failing to raise constitutional grounds on appeal, failing to remove herself from the appeal and for arguing only one frivolous ground on appeal. Appellant failed to demonstrate that his appellate counsel's performance was deficient or that he was prejudiced. Appellant failed to identify the grounds that he believed should have been raised on direct appeal or demonstrate that such grounds would have had a reasonable probability of altering the outcome on appeal. Appellant failed to demonstrate that appellate counsel should have been removed. Therefore, we conclude that the district court did not err in denying this claim.

¹¹Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (citing to Strickland v. Washington, 466 U.S. 668 (1984)).

¹²Jones v. Barnes, 463 U.S. 745, 751 (1983).

¹³Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Finally, appellant claimed that his guilty plea was not entered voluntarily and knowingly. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.¹⁴ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.¹⁵ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.¹⁶

Appellant claimed that his guilty plea was not entered voluntarily and knowingly because trial counsel was ineffective for the reasons set forth earlier and because an alleged promised plea term was not in the plea agreement. Appellant failed to carry his burden of demonstrating that his plea was invalid. For the reasons discussed earlier, appellant failed to demonstrate that he received ineffective assistance of counsel, and thus, he failed to demonstrate that his counsel's representation caused him to enter his plea involuntarily or unknowingly. Appellant failed to indicate what alleged promised plea term was omitted from the plea agreement. The totality of the circumstances reveals that appellant was made aware of the consequences of his plea. The written guilty plea agreement correctly informed appellant of the negotiations, the potential penalties he faced and the constitutional rights that he waived by entry of his guilty plea. The district court further personally canvassed

¹⁴Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

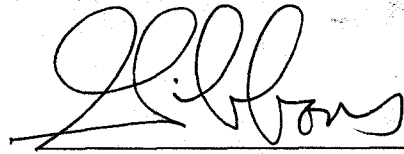
¹⁵Hubbard, 110 Nev. at 675, 877 P.2d at 521.


¹⁶State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

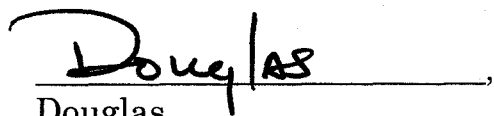
appellant about his understanding of the negotiations and the consequences of his guilty plea. The State provided a factual basis for the plea, and appellant affirmatively indicated that he was entering his plea because it was in his best interests. Therefore, we conclude that the district court did 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.¹⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁸


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

¹⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁸We 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: Honorable Jackie Glass, District Judge
Robert L. Butterfield
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk