IN THE SUPREME COURT OF THE STATE OF NEVADA

MELISSA J. MITCHELL-SPENCER
A/K/A MELISSA JOE MITCHELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47560

FILED

NOV 29 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On October 11, 2005, the district court convicted appellant, pursuant to a guilty plea, of grand larceny (category C felony). The district court sentenced appellant to serve a term of twelve to thirty-six months in the Nevada State Prison to be served consecutive to the sentence imposed in district court case number C200242. Appellant did not file a direct appeal.

On March 13, 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 district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 22, 2006, the district court denied appellant's petition. This appeal followed.

In her petition, appellant contended that her guilty plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and

intelligently.[1] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[2] This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3]

Appellant claimed that her guilty plea was invalid because the court imposed a sentence greater than that recommended in the guilty plea agreement and imposed the sentence to run consecutive to, rather than concurrent with, the sentence imposed in district court case number C200242. Appellant failed to demonstrate that the guilty plea was not entered knowingly or intelligently. Pursuant to the plea agreement, the parties recommended that appellant be sentenced to a term of twelve to thirty months to run concurrently with the sentence imposed in district court case number C200242. However, the guilty plea agreement, which appellant acknowledged having read, understood and signed, informed appellant that she was facing a term of one to five years and the district court retained the discretion to run the sentence concurrently or consecutively. Appellant was also verbally informed several times during the plea canvass and appellant acknowledged that she understood that the district court was not obligated to accept the sentence recommended by the parties and the district court did not have to impose the sentence to run concurrently. Appellant's sentence fell within the permissible range of

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

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

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

punishment for grand larceny (category C felony).[4] Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate her guilty plea as involuntary and unknowing.[5] 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.[6] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Melissa J. Mitchell-Spencer
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[4]See NRS 205.222; NRS 193.130(c).

[5]See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

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