IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN ALVAREZ, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48216
JUAN ALVAREZ, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 48217

FILED
MAY 24 2007
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
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. We elect to consolidate these appeals for disposition.[1] Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On April 8, 2005, the district court convicted appellant, pursuant to a guilty plea, of three counts of robbery.[2] The district court sentenced appellant to serve three consecutive 26 to 120 month terms in the Nevada State Prison. Appellant did not file a direct appeal.

On March 6, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court

[1]See NRAP 3(b).

[2]Appellant was convicted of two counts of robbery in District Court Case No. CR-05-0307A and one count of robbery in District Court Case No. CR05-0240.

07-11439

designating both district court case numbers. 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 September 20, 2006, the district court denied appellant's petition. These appeals followed.

In his petition, appellant contended that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, 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 of a different outcome in the proceedings.[3] To demonstrate prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that he 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] Further, a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record.[6]

First, appellant asserted that his trial counsel was ineffective for failing to explain to him whether or not he could be convicted of

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[3]Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

[5]Strickland, 466 U.S. at 697.

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

robbery if he had gone to trial even though he used a pellet gun during the commission of the crime. A person is guilty of robbery if he takes property from the person of another "by means of force or violence or fear of injury."[7] The statute does not require that the perpetrator use a firearm or other deadly weapon to commit robbery.[8] As appellant could have been convicted of robbery if he had gone to trial, he failed to demonstrate how his counsel's failure to apprise him of this fact would have made it more likely that he would not have pleaded guilty and insisted upon proceeding to trial. Accordingly, the district court did not err in denying relief on this claim.

Second, appellant argued that his trial counsel was ineffective because his trial counsel did not present mitigating evidence, such as his cooperation with authorities, at appellant's sentencing hearing. In particular, his trial counsel failed to state that appellant cooperated with the police and admitted to further robberies. However, this claim is belied by the record. Appellant's trial counsel presented letters written on appellant's behalf. In addition, the Presentence Investigation Report also contained a letter written by the appellant. Moreover, appellant's trial counsel specifically mentioned that appellant was forthcoming and admitted to additional robberies while he was in police custody. Accordingly, the district court did not err in denying relief on this claim.

Third, appellant asserted that his trial counsel was ineffective because he did not argue that appellant's sentences should run

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[7]NRS 200.380(1).

[8]See id.

concurrently at the sentencing hearing. This claim is also belied by the record. Appellant's trial counsel specifically argued that appellant's prior criminal history, employment history, and capacity to make restitution militated concurrent sentences. Accordingly, the district court did not err in denying relief on this claim.

Fourth, appellant also argued that his trial counsel was ineffective for failing to inform him, a non-English speaking person, that he could serve consecutive sentences and for telling him that two of the sentences would run concurrently. Appellant failed to demonstrate prejudice. During the plea canvass, at which time an interpreter was present, appellant acknowledged that he understood that the district court could sentence him to any legally permissible sentence and was not bound by the plea negotiations. He acknowledged that he was not pleading guilty based upon any promise. In addition, appellant acknowledged that he could receive consecutive sentences as specified in the guilty plea memorandum for Case No. CR05-0307A. The guilty plea memorandum was also signed by an interpreter. As appellant was notified of the possibility of consecutive sentences, he did not sustain his burden of showing he would not have pleaded guilty but for his counsel's failure to inform him of the possibility of the imposition of consecutive sentences or counsel's prediction that appellant would receive concurrent sentences.[9] Accordingly, the district court did not err in denying relief on this claim.

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[9]See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (holding that the "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.").

Fifth, appellant claimed that his trial counsel was ineffective for failing to file a notice of appeal or consult with him concerning his right to appeal. Moreover, appellant claimed that his plea agreement did not sufficiently notify him of his right to appeal. "'[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.'"[10] However, "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."[11] Counsel is only required to advise a defendant who has pleaded guilty if the defendant inquires about his right to appeal or "the situation indicates that the defendant may benefit from receiving the advice."[12] Appellant did not assert in his petition that he inquired about his right to appeal. Further, appellant did not assert sufficient claims that would likely have succeeded on appeal. Moreover, during the plea canvass, appellant was informed of the charges against him, the factual basis upon which the charges were based, and the possible sentences for those offenses.[13] Accordingly, the district court did not err in denying relief on this claim.

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[10]Davis v. State, 115 Nev. 17, 20, 974 P.2d 658 660 (1999) (quoting Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994)).

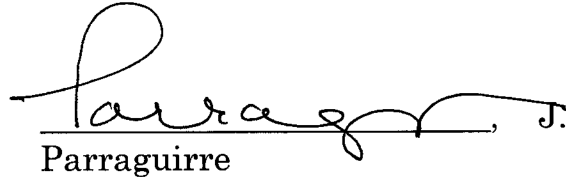
[11]Thomas v. State, 115 Nev. 149, 150, 979 P.2d 222, 223 (1999).

[12]Id.

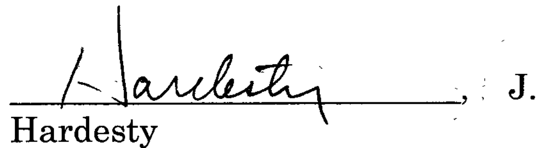
[13]See Little v. Warden, 117 Nev. 845, 849, 34 P.3d 540, 542-43 (2001) (holding that a district court must ensure that a defendant who pleads guilty understands both the nature of the charges against him and the direct consequences of his guilty plea).

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.[14] Accordingly, we

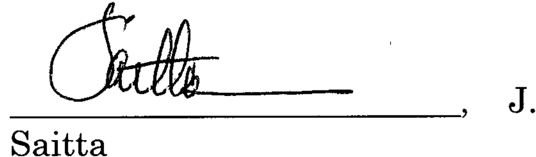
ORDER the judgment of the district court AFFIRMED.



Parraguirre, J.



Hardesty, J.



Saitta, J.

cc: Hon. Robert H. Perry, District Judge
Juan Alvarez
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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