

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMERSON JOINER, JR. A/K/A
EMERSON JOINER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48392

FILED

MAY 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubade*
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; Stewart L. Bell, Judge.

On February 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault. The district court sentenced appellant to serve a term of 33 to 144 months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 30, 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, the district court declined to appoint counsel to represent appellant. Following an evidentiary hearing, the district court denied appellant's petition on December 15, 2006. This appeal followed.

In his petition, appellant claimed his guilty plea was unknowingly and involuntarily entered. 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

Specifically, appellant contended that his plea was involuntary and unknowing because he was promised probation and his trial counsel forged his signature on the guilty plea agreement. At the evidentiary hearing, counsel denied forging appellant's signature, and stated that his practice was to have the defendant sign the guilty plea agreement in open court. The district court compared appellant's signature from several documents and concluded that all the signatures were appellant's. Thus, appellant failed to demonstrate that his trial counsel forged appellant's signature on the guilty plea agreement. The district attorney stated at the evidentiary hearing that appellant was never promised probation. Furthermore, appellant confirmed during his plea canvass that he had read and understood the guilty plea agreement and that he understood that his maximum sentence could be two to twenty years. The totality of the circumstances establish that appellant entered his guilty plea intelligently and knowingly. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.³ Thus, the district court did not err in denying this claim.

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

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

³See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

Next, appellant claimed that his trial counsel was ineffective. 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 A petitioner must demonstrate the factual allegations underlying his ineffective assistance of counsel claim by a preponderance of the evidence.⁶ Further, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁷

Appellant claimed that his trial counsel was ineffective for coercing him into pleading guilty with the promise of probation and then forging his signature on a guilty plea agreement. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. As discussed above, the district court determined that counsel did not forge appellant's signature and that the State never promised appellant probation. Furthermore, appellant benefited significantly by

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).

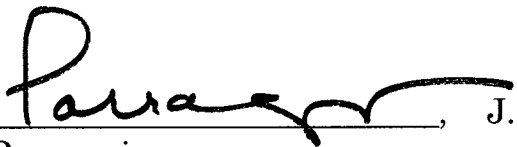
⁶Means v. State, 120 Nev. 1001, 1013, 103 P.3d 25, 33 (2004).

⁷Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


pleading guilty in that he avoided more serious charges.⁸ Thus, 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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

⁸Appellant was charged by criminal complaint with fifteen counts of sexual assault of a minor under the age of sixteen, twenty counts of open and gross lewdness, and one count of child abuse and neglect.

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We 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: Hon. Stewart L. Bell, District Judge
Emerson Joiner Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk