

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVON E. COOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48477

FILED

MAY 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

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; Michelle Leavitt, Judge.

On September 15, 2005, the district court convicted appellant, pursuant to a guilty plea, of possession of a stolen vehicle. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. Appellant did not file a direct appeal.

On July 25, 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 November 3, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his attorney induced him into pleading guilty by telling him that certain motions would be filed in his case pursuant to the "deal." It appears that appellant believed the plea negotiation had been breached.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and

intelligently.¹ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.² In determining the validity of a guilty plea, this court looks to the totality of the circumstances.³ In addition, a petitioner's allegations must be supported by "specific factual allegations that would, if true, have entitled him to withdrawal of his plea."⁴ Moreover, the factual allegations must not be belied by the record.⁵

Based upon our review of the record on appeal, we conclude that appellant failed to carry his burden of demonstrating his plea was invalid. Appellant did not indicate what "deal" required the filing of the motions.⁶ Further, appellant failed to demonstrate that the failure to file any motions rendered his plea invalid. Appellant was correctly informed, in both the plea agreement and the plea canvass, of the potential sentence he faced by pleading guilty.⁷ He further acknowledged that he was not pleading guilty based on the promise of a particular sentence. To the extent that appellant claimed that his counsel should have filed a motion to modify his sentence, he failed to allege specific facts concerning any

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

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

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

⁴Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1985).

⁵Id. at 503, 686 P.2d at 225.

⁶See id. at 502, 686 P.2d at 225.

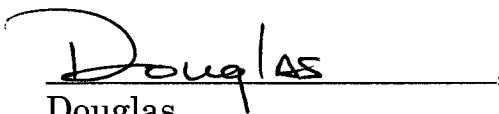
⁷NRS 205.273(3); NRS 193.130(2)(c).

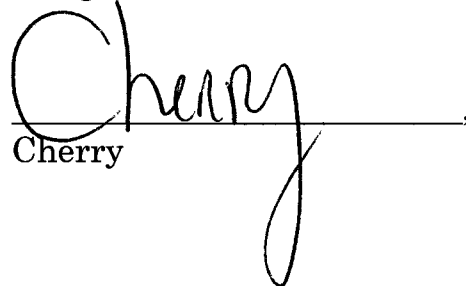
mistaken assumptions upon which his sentence was based and thus had not demonstrated that the motion had any probability of success.⁸ Moreover, to the extent that appellant may have asserted that the "deal" was his plea agreement, any claim of breach is belied by the record.⁹ Accordingly, we conclude 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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

⁸See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996) (stating that "a motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme detriment").

⁹See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Michelle Leavitt, District Judge
Devon E. Cooper
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk