

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORNALDO GARRIDO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49118

**FILED**

OCT 11 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
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; Jackie Glass, Judge.

On February 27, 2006, the district court convicted appellant, pursuant to a guilty plea, of attempted sexual assault of a minor under the age of 14 (Count 1) and lewdness with a minor under the age of 14 (Count 2). The district court sentenced appellant to serve a term of 2 to 20 years for Count 1 and a consecutive term of 10 years to life for Count 2 in the Nevada State Prison. Appellant did not appeal his conviction or sentence.

On October 26, 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, however, it did conduct an evidentiary hearing. On March 30, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial counsel. 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.<sup>1</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>2</sup>

First, appellant claimed that his counsel was ineffective for failing to conduct a thorough investigation. Specifically, he contended that his counsel should have interviewed the victim and compelled her to undergo a psychological examination to determine the truthfulness of her allegations against appellant. Appellant provided no support, other than his bare allegation, that his counsel did not interview the victim.<sup>3</sup> Further, the record indicates that appellant's prior counsel thoroughly cross-examined the victim at the preliminary hearing. Additionally, appellant provided no support whatsoever establishing that his counsel could compel the victim to undergo a psychological evaluation.<sup>4</sup> Appellant

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<sup>1</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>2</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>3</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

<sup>4</sup>During the pendency of appellant's case in the district court, this court required that a defendant seeking to compel a child victim to undergo a psychological evaluation had to show that (1) the State had notified the defense that it intended to examine the victim with its own expert, and (2) the defendant made a prima facie showing of a compelling need for a psychological evaluation. State v. District Court (Romano), 120 Nev. 613, 623, 97 P.3d 594, 600 (2004), overruled by Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006). Whether the need was compelling was determined by (1) whether little or no corroboration of the defense existed beyond the victim's testimony, and (2) whether there was a reasonable

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included a document indicating that a psychologist who allegedly evaluated the victim believed it was possible the victim could have made up the story based on a friend's abuse.<sup>5</sup> However, appellant did not show that he would not have pleaded guilty and would have insisted on going to trial based on the statements of the psychologist in light of his own confession to the molestation. Accordingly, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant claimed that his counsel was ineffective for failing to challenge the introduction of appellant's statements as they were coerced by the police in violation of Miranda v. Arizona.<sup>6</sup> Appellant's allegations are bereft of any specific facts, and consequently, appellant failed to demonstrate that the police violated Miranda and that his confession was coerced. Thus, appellant failed to show that a motion to suppress would have been meritorious.<sup>7</sup> Accordingly, we conclude that the district court did not err in denying this claim.

Third, appellant argued that his counsel was ineffective for failing file an appeal despite his request. "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal

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*... continued*

basis for believing that the victim's emotional state may have affected his or her veracity. Id.

<sup>5</sup>It is not clear if this document has been altered in any fashion, but we note that different parts of the document contain different fonts that appear to have been generated by both a computer and typewriter.

<sup>6</sup>384 U.S. 436 (1966).

<sup>7</sup>See Kirksey, 112 Nev. at 990, 923 P.2d at 1109.

or indicates dissatisfaction with a conviction."<sup>8</sup> "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal."<sup>9</sup>

Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant's trial counsel testified at the evidentiary hearing that he reviewed the guilty plea agreement with appellant and discussed his limited right to appeal. Appellant's trial counsel further testified that appellant never asked for an appeal. Moreover, he was not aware of any non-frivolous issues that he could have raised in an appeal. Appellant submitted numerous affidavits stating that the affiants heard appellant ask his attorney to file an appeal and a copy of a letter to his attorney requesting that he file an appeal on appellant's behalf, however, he did not challenge his trial attorney's testimony during the evidentiary hearing.<sup>10</sup> Thus, appellant failed to demonstrate by a preponderance of the evidence that he asked his counsel to file an appeal.<sup>11</sup> Accordingly, the district court did not err in denying this claim.

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<sup>8</sup>Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); see Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

<sup>9</sup>See Davis, 115 Nev. at 20, 974 P.2d at 660.

<sup>10</sup>Appellant further did not summon any of the affiants to testify on his behalf. The affidavits were nearly identical in their substance and do not provide the affiants relationship, if any, to appellant.

<sup>11</sup>State v. Rincon, 122 Nev. \_\_\_, \_\_\_, 147 P.3d 233, 238 (2006) (emphasizing that "the district court is in the best position to adjudge the credibility of the witnesses and the evidence," and this court should not disturb that determination unless it has a "definite and firm conviction that a mistake has been committed") (quoting State v. McKellips, 118 Nev. 465, 469, 49 P.3d 655, 658 (2002)).

Next, appellant claimed that his plea was involuntary. A guilty plea is presumptively valid, and appellant carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>12</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>13</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>14</sup>

Specifically, appellant claimed that his plea was involuntary because he was not advised of the specific conditions of lifetime supervision. Under Nevada law, 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.<sup>15</sup> In light of the fact that the conditions of lifetime supervision applicable to a specific individual are not generally determined until long after the plea canvass, we disagree that an advisement about those conditions is a requisite of a valid guilty plea. Rather, all that is constitutionally required is that the totality of the circumstances demonstrates that appellant was aware that he would be

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<sup>12</sup>Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

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

<sup>14</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

<sup>15</sup>Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

subject to the consequence of lifetime supervision before entry of the plea.<sup>16</sup>

Appellant's claim that he was unaware of the consequence of lifetime supervision is belied by the record.<sup>17</sup> During the plea canvass, the district court advised appellant that he was subject to lifetime supervision, which would commence after any term of parole or probation. Appellant acknowledged that he understood. Further, the plea agreement provided that appellant's sentence would include lifetime supervision "commencing after any period of probation or any term of imprisonment and period of release upon parole" and that the "special sentence of lifetime supervision must begin upon release from incarceration." Accordingly, we conclude that appellant was properly advised of the lifetime supervision requirement and thus, his plea was not involuntary for this reason.<sup>18</sup>

Next, appellant claimed lifetime supervision is unconstitutional because it constitutes a bill of attainder, is vague and ambiguous, and violates Apprendi.<sup>19</sup> These claims were not properly brought in a post-conviction petition for a writ of habeas corpus where the

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<sup>16</sup>Id. at 831, 59 P.3d at 1197.

<sup>17</sup>See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

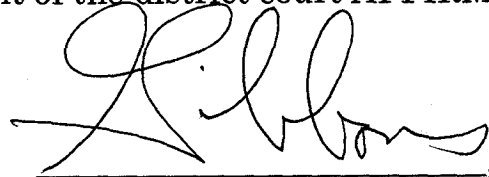
<sup>18</sup>Appellant also contended that his counsel was ineffective for failing to inform him that his sentence would include lifetime supervision. However, as discussed above, appellant was adequately advised of the lifetime supervision requirement. Accordingly, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

<sup>19</sup>Apprendi v. New Jersey, 530 U.S. 466 (2000).

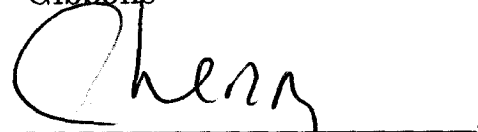
conviction is based upon a guilty plea.<sup>20</sup> Accordingly, we conclude that the district court did not err in dismissing these claims.

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.<sup>21</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. Jackie Glass, District Judge  
Ornaldo Garrido  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>20</sup>See NRS 34.810(1)(a).

<sup>21</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).