IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT BINFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49716

FILED

JUN 06 2008

TRACIE K. LINDEMAN
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; Joseph T. Bonaventure, Judge.

On April 12, 2006, the district court convicted appellant, pursuant to a guilty plea, of lewdness with a child under the age of 14. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years. The district court also imposed lifetime supervision. No direct appeal was taken.

On March 13, 2007, 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 June 27, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that (1) the State and district court failed to seek a competency hearing, (2) the district court entered an ambiguous sentence, (3) the district court was biased during

sentencing and failed to consider all possible sentence ranges, (4) the provisions of lifetime supervision were unconstitutional, and (5) the State failed to introduce evidence that appellant's therapist violated a professional duty. As appellant's claims did not address the voluntariness of his plea or whether his plea was entered without the effective assistance of counsel, appellant's claims fell outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based upon a guilty plea.[1] Therefore, the district court did not err in denying these claims.

Next, 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, 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.[2] 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 upon going to trial.[3] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[4]

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[1]NRS 34.810(1)(a).

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

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

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

First, appellant claimed that his counsel was ineffective for failing to seek a competency hearing. Specifically, appellant claimed that his counsel was aware that appellant had severe psychological problems associated with feeling guilty about the alleged abuse. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. A defendant is competent to enter a plea if he has: (1) "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding,'" and (2) "'a rational as well as factual understanding of the proceedings against him.'"[5] Nothing in the record indicates that appellant was not competent to enter his guilty plea. Appellant's feelings of guilt, which prompted him to confess the sexual abuse to a psychologist, without more, did not indicate that he was unable to understand the charges and proceedings or assist his counsel in his defense. At the plea canvass, appellant responded appropriately and coherently to the district court's questions. It is not apparent from the record that appellant was impaired or that he did not understand the district court's questions. Appellant acknowledged that he read and understood the plea agreement, which set forth the rights he waived by entering his guilty plea. Appellant failed to establish a reasonable probability that, had counsel investigated his competency or requested a competency hearing, the district court would have rejected his plea or he would have refused to plead guilty and

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[5]Godinez v. Moran, 509 U.S. 389, 396 (1993) (quoting Dusky v. United States, 362 U.S. 402 (1960)); see also NRS 178.400(2).

insisted on going to trial. Therefore, the district court did not err in denying this claim.[6]

Second, appellant claimed that his counsel was ineffective for failing to conduct an investigation. Specifically, appellant claimed that his counsel failed to (1) obtain appellant's therapy records, (2) obtain statements from appellant's family, (3) obtain statements from the victim's family, (4) investigate the victim and the victim's family, (5) file discovery requests, (6) review police reports containing misleading statements, and (7) arrange for a psychologist to speak to the victim. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. "An attorney must make reasonable investigations or a reasonable decision that particular investigations are unnecessary."[7] A petitioner asserting a claim that his counsel did not conduct a sufficient investigation bears the burden of showing that he would have benefited from a more thorough investigation.[8] Appellant did not identify what information his counsel could have discovered had he explored any of the proffered avenues of investigation.[9] He further failed

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[6]To the extent that appellant claimed that his plea was invalid because he was incompetent to enter a plea, appellant failed to demonstrate his plea was involuntary for the reasons set forth above.

[7]State v. Powell, 122 Nev. 751, 759, 138 P.3d 453, 458 (2006) (citing Strickland, 466 U.S. at 691).

[8]Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

[9]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims, which are unsupported by specific facts, are insufficient to grant relief).

to identify what statements contained in the police reports were misleading.[10] Moreover, appellant provided no support demonstrating that his counsel could compel the victim to undergo a psychological evaluation.[11] Thus, appellant failed to demonstrate an investigation would have had a reasonable probability of affecting the outcome. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to communicate with appellant. Specifically, he claimed that his counsel only spoke with him for a total of three hours. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not allege what specific facts he would have conveyed to counsel and how those facts would have benefited the defense had counsel met with appellant.[12] Therefore, the district court did not err in denying this claim.

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[10]See id.

[11]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 his 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 offense exist[ed] beyond the victim's testimony, and (2) whether there [was] a reasonable basis 'for believing that the victim's . . . emotional state may have affected his or her veracity.'" Romano, 120 Nev. at 623, 97 P.3d at 600.

[12]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Fourth, appellant claimed that his counsel was ineffective for failing to represent appellant at pretrial proceedings, ensure appellant's presence at pretrial proceedings, and obtain transcripts of pretrial proceedings. Appellant asserted that had his counsel done this, his counsel would have realized that there was insufficient evidence to convict appellant of any crime charged. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not state what specific proceedings at which his counsel failed to ensure appellant's presence, failed to obtain transcripts for, or failed to represent appellant.[13] By entering a guilty plea, appellant waived having the State prove each element of the original crimes by proof beyond a reasonable doubt. Given the evidence in the record regarding appellant's guilt, his confession to his therapist and the police, and the victim's confirmation of the abuse, appellant failed to demonstrate that he was prejudiced by counsel's advice to plead guilty. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his counsel was ineffective for failing to file a motion to suppress his therapist's statements.[14] Specifically, he claimed that his therapist failed to promptly report the abuse as was required by NRS 432B.220. Appellant failed to demonstrate

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[13]See id.

[14]Appellant further claimed that his counsel failed to seek damages and professional sanctions against appellant's therapist for the therapist's failure to report the child abuse sooner, which endangered the victim. This claim fell outside the scope of permissible claims. See NRS 34.810(1)(a).

that his counsel was deficient or that he was prejudiced. Appellant did not demonstrate that a motion to suppress would have been meritorious.[15] Although NRS 432B.220 imposes a duty upon a therapist or psychologist to report child abuse "not later than 24 hours after the person knows or has reasonable cause to believe" that the child has been abused,[16] appellant did not explain how the purported delay of the therapist in reporting the abuse rendered evidence discovered as a result of that report, constitutionally infirm or otherwise, warranted the application of the exclusionary rule.[17] Moreover, as there was evidence of abuse notwithstanding appellant's confession to his therapist, i.e., appellant's confession to the police and the victim's statements to the police, appellant did not demonstrate that he would not have pleaded guilty and would have insisted upon going to trial but for his counsel's failure to file a motion to suppress.[18] Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his counsel was ineffective for failing to pursue a defense and instead seeking a plea agreement. He

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[15]See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996).

[16]NRS 432B.220(1)(b).

[17]We note that appellant did not allege that his therapist was an agent of the State. See Radkus v. State, 90 Nev. 406, 408, 528 P.2d 697, 698 (1974) (holding that "[t]he Fourth Amendment simply does not apply where evidence is discovered and turned over to the government by private citizens.") (citing Burdeau v. McDowell, 256 U.S. 465 (1921)).

[18]See Kirksey, 112 Nev. at 990, 923 P.2d at 1109 (1996).

asserted that this created a conflict of interest between appellant and his counsel. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not state what evidence his counsel ignored or failed to discover by pursuing a plea agreement.[19] Therefore, the district court did not err in denying this claim.

Seventh, appellant claimed that his counsel was ineffective for inducing him to plead guilty by advising him that the district court would not consider the facts of his crime at sentencing if appellant pleaded guilty. Appellant failed to demonstrate that he was prejudiced. In the plea agreement, appellant acknowledged that he was not pleading guilty as a result of any promise or leniency. At the sentencing hearing, the district court acknowledged that appellant committed a crime and pleaded guilty to that crime, but specifically stated that it was "not going to go into the facts of the case." Moreover, appellant received the sentence for which he bargained. Thus, he did not demonstrate that he would not have pleaded guilty and would have insisted upon going to trial on the original information but for counsel's advice. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his counsel was ineffective for advising appellant to plead guilty when appellant's counsel was not in possession of all the documents in appellant's case file. Appellant further claimed that the withholding of the documents thwarted his ability to file a petition for a writ of habeas corpus. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not

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[19]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

state what documents his attorney did not have in his possession when counsel advised appellant to plead guilty.[20] Further, to the extent that appellant claimed that counsel's failure to secure the documents hindered appellant's ability to file a post-conviction petition for a writ of habeas corpus, appellant's claim was improperly raised in this petition.[21] Therefore, the district court did not err in denying this claim.

Ninth, appellant claimed that his counsel was ineffective for failing to inform appellant of his ability to withdraw his plea prior to sentencing. Specifically, he claimed that he would have moved to withdraw his guilty plea because he did not benefit from his plea agreement. Appellant failed to demonstrate that he was prejudiced. NRS 176.165 permits a defendant to file a motion to withdraw a guilty plea before sentencing. The district court may grant such a motion in its discretion for any substantial reason that is fair and just.[22] In considering whether a defendant has "advanced a substantial, fair, and just reason with withdraw a [guilty] plea, the district court must consider the totality of the circumstances to determine whether the defendant entered the plea voluntarily, knowingly, and intelligently."[23] During the plea canvass, appellant informed the district court that he read and understood the plea agreement. The plea agreement set forth the rights that appellant was

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[20]See id.

[21]See NRS 34.810(1)(a).

[22]State v. District Court, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

[23]Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001).

waiving by pleading guilty. Further, appellant did not assert that the motion would have asserted that his plea was involuntary but merely that he did not receive a benefit from his plea agreement. Thus, appellant did not demonstrate that a presentence motion to withdraw his guilty plea would have been successful. Therefore, the district court did not err in denying this claim.[24]

Tenth, appellant claimed that his counsel was ineffective for failing to inform appellant of all the available sentences. Appellant failed to demonstrate that he was prejudiced. Pursuant to his plea agreement, appellant pleaded guilty to lewdness with a minor occurring between January 1, 2002, and December 31, 2004. During that time period, the legislature amended NRS 201.230 to provide an alternate sentence of 2 to 20 years in addition to a sentence of life with the possibility of parole after 10 years.[25] Appellant agreed to the life sentence and received that sentence. He agreed to that sentence in exchange for the State's promise not to pursue the original charges, which included two counts of sexual assault with a minor under the age of 14, two counts of lewdness with a minor under the age of 14, and one count of open and gross lewdness. The additional lewdness with a minor count could have resulted in a potential

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[24]To the extent that appellant claimed that his plea was invalid because he did not receive a benefit, the district court did not err in denying this claim for the reasons discussed above.

[25]See 2003 Nev. Stat. ch. 461, § 2 at 2826. In 2005, the legislature amended NRS 201.230 to provide only a sentence of life with the possibility of parole after ten years. See 2005 Nev. Stat., ch. 507, § 33, at 2877.

life sentence.[26] Moreover, the sexual assault counts carried mandatory sentences of life with the possibility of parole after 20 years.[27] Appellant did not demonstrate that had he known of a lesser available sentence to the crime to which he pleaded guilty, he would not have pleaded guilty and would have insisted upon going to trial on the original information. Therefore, the district court did not err in denying this claim.[28]

Eleventh, appellant claimed that his counsel was ineffective for agreeing to an illegal sentence and failing to argue for a lesser sentence. Appellant failed to demonstrate that he was prejudiced. Pursuant to the plea agreement, which appellant signed, the parties agreed to a sentence of life with the possibility of parole after 10 years for a single count of lewdness with a minor under the age of 14, which was a legal sentence under NRS 201.230.[29] Appellant did not reserve the right to argue for a lesser sentence. In light of the fact that appellant received a single sentence of life with the possibility of parole after 10 years, appellant did not demonstrate that he would not have pleaded guilty and would have insisted upon going to trial on the original charges as

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[26]See 1999 Nev. Stat., ch. 105, § 49, at 470, 472 (NRS 201.230); 2003 Nev. Stat., ch. 461, § 2 at 2826 (NRS 201.230).

[27]See 1999 Nev. Stat., ch. 105, § 23, at 431-32 (NRS 200.366); 2003 Nev. Stat., ch. 461, § 1, at 2825-26 (NRS 200.366).

[28]To the extent that appellant claimed that his plea was invalid because he was not informed of the correct available sentencing range, the district court did not err in denying this claim for the reasons set forth above.

[29]See 1999 Nev. Stat., ch. 105, § 49, at 470, 472; 2003 Nev. Stat., ch. 461, § 2 at 2826.

previously discussed. Therefore, the district court did not err in denying this claim.[30]

Twelfth, appellant claimed that his counsel was ineffective for failing to present mitigating evidence at sentencing. Specifically, he claimed that numerous witnesses would have testified to appellant's work ethic, lifestyle, social background, and moral characteristics. He further claimed that his counsel failed to investigate the victim or the fact that appellant's therapist violated professional duty. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not establish that the evidence of appellant's work ethic, lifestyle, social background, and moral characteristics, if introduced, was so favorable that the district court would have imposed a lesser sentence. He further failed to establish how his therapist's alleged violation of his professional duty would have induced the court to impose a lesser sentence. Moreover, he did not allege what facts his counsel would have discovered about the victim that would have affected appellant's sentence.[31] Therefore, the district court did not err in denying this claim.

Thirteenth, appellant claimed that his counsel failed to obtain a psychological evaluation or psychosexual evaluation of appellant to be used at sentencing. Appellant failed to demonstrate that his counsel was

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[30]To the extent that appellant claimed his plea was invalid because it was based on his counsel's advice or the State's representation that the only sentence available was life with the possibility of parole after 10 years, the district court did not err in denying this claim for the reasons set forth above.

[31]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

deficient or that he was prejudiced. Appellant did not establish that the results of the psychological evaluation or psychosexual evaluation, if introduced, were so favorable that the district court would have imposed a lesser sentence. Appellant received the sentence for which he bargained. Therefore, the district court did not err in denying this claim.

Fourteenth, appellant claimed that his counsel failed to give him the opportunity to examine the presentence investigation report [PSI] for errors. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Appellant did not identify any errors in his PSI, which the district court relied on at the sentencing hearing, that appellant would have discovered had his counsel permitted appellant to inspect the report.[32] Further, appellant had the opportunity to address the district court at sentencing and did not mention his counsel's failure to allow him to see the PSI. Therefore, the district court did not err in denying this claim.

Fifteenth, appellant claimed that his counsel was ineffective for permitting him to be sentenced based on impalpable and suspect evidence. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the specific evidence he contended was erroneous upon which the court relied.[33] Therefore, the district court did not err in denying his claim.

Sixteenth, appellant claimed that his counsel was ineffective for failing to object to the cruel and unusual sentencing structure.

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[32]See id.

[33]See id.

Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. "A sentence within the statutory limits is not 'cruel and unusual punishment'" where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[34] NRS 201.230 provides for a sentence of life with the possibility of parole after 10 years for the crime of lewdness with a minor under the age of 14; appellant's sentence fell within the statutory limits.[35] Further, as the evidence in the record showed that appellant repeatedly molested his nephew, appellant failed to demonstrate that his sentence was unreasonably disproportionate to the crime. Therefore, the district court did not err in denying this claim.

Seventeenth, appellant claimed that his counsel was ineffective for failing to object to appellant's ambiguous sentence. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not explain how his sentence was ambiguous.[36] Further, appellant's sentence was within the permissible range as set forth by NRS 201.230.[37] Therefore, the district court did not err in denying this claim.

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[34]Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

[35]See 1999 Nev. Stat., ch. 105, § 49, at 470, 472; 2003 Nev. Stat., ch. 461, § 2 at 2826.

[36]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[37]See 1999 Nev. Stat., ch. 105, § 49, at 470, 472; 2003 Nev. Stat., ch. 461, § 2 at 2826.

Eighteenth, appellant claimed that his counsel was ineffective for failing to object to judicial bias at the sentencing hearing. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not allege any specific facts concerning how the district court was biased during the sentencing hearing.[38] Therefore, the district court did not err in denying this claim.[39]

Nineteenth, appellant claimed that his counsel was ineffective for permitting him to be subject to lifetime supervision. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. The plea agreement, which appellant signed, provided that appellant would be subject to a special sentence of lifetime supervision. Further, the district court did not have discretion concerning the imposition of lifetime supervision; rather, lifetime supervision is mandatory for anyone convicted of a sexual offense.[40] Therefore, the district court did not err in denying this claim.

Twentieth, appellant claimed that his counsel was ineffective for failing to argue that the provisions of lifetime supervision were unconstitutional. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. 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

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[38]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[39]To the extent that appellant claimed that his guilty plea was invalid because of judicial bias at sentencing, the district court did not err in denying his claim for the reasons discussed above.

[40]See NRS 176.0931(1).

the expiration of the sex offender's completion of a term of parole or probation, or release from custody.[41] In light of the fact that the conditions of lifetime supervision applicable to a specific individual are not generally determined until long after the sentencing hearing, appellant has not demonstrated that his counsel was ineffective for failing to object to any specific condition as unconstitutional. Therefore, the district court did not err in denying this claim.

Twenty-first, appellant claimed that his counsel was ineffective for failing to ensure that appellant appear before a psychological review board to ensure that he could be eligible for parole consideration. He claimed that he was denied due process as to future parole hearings. Appellant's claim did not address whether his guilty plea was valid or whether the plea was entered with the effective assistance of counsel and thus fell outside of the claims permissible in a post-conviction petition for a writ of habeas corpus from a judgment of conviction based on a guilty plea.[42] Therefore, the district court did not err in denying his claim.

Twenty-second, appellant claimed that his counsel was ineffective for advising appellant not to file an appeal. Appellant stated that his counsel said it would be a "waste of time" to file the appeal. He further stated that his counsel told him that the State would refile the original charges if appellant were successful on appeal. "'[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a

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[41]Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

[42]NRS 34.810(1)(a).

desire to appeal or indicates dissatisfaction with a conviction.'"[43] However, "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."[44] 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. . . ."[45] Appellant did not allege that he requested an appeal. He asserted that he inquired about an appeal and his counsel advised him of the potential consequences of pursuing an appeal. Appellant did not allege that once his counsel informed him of the potential consequences that he requested that his counsel file a notice of appeal and his counsel thereafter refused. Therefore, the district court did not err in denying this claim.

Appellant also claimed that his 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.[46] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[47] In

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[43]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)).

[44]Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

[45]Id.

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

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

determining the validity of a guilty plea, this court looks to the totality of the circumstances.[48]

First, appellant claimed that his counsel coerced him into pleading guilty. Appellant stated that his counsel told him that the jury would convict appellant of all counts if it convicted him of one count and probation was not an available sentencing option. Appellant failed to demonstrate that his plea was involuntary. Appellant stated, in the plea agreement, that he was not pleading guilty as a result of threats or coercion. Therefore, the district court did not err in denying this claim.[49]

Second, appellant claimed that he was not advised that the district court had the ultimate authority in imposing appellant's sentence. Appellant failed to demonstrate that his plea was involuntary. Appellant acknowledged in his plea agreement that the district court was the ultimate authority in imposing sentence and was not bound by the plea agreement.[50] Further, the district court imposed the sentence for which appellant bargained. Therefore, the district court did not err in denying this claim.

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

[49]To the extent that he contends that his counsel was ineffective for the reasons set forth in this claim, the district court did not err in denying this claim for the reason set forth above.

[50]While the plea agreement initially stated that the district court "must" sentence appellant to a term of life with the possibility of parole after 10 years, it later stated that the court was not bound by the plea negotiations and had the discretion to sentence appellant "within the limits prescribed by statute."

Third, appellant claimed that the district court failed to advise him of the requirements and terms of lifetime supervision. As discussed above, the particular conditions of lifetime supervision 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, long after the plea canvass.[51] Thus, an advisement about those conditions is not a requisite to a valid guilty plea. Rather, all that is constitutionally required is that the totality of the circumstances demonstrate that appellant was aware that he would be subject to the consequence of lifetime supervision before entry of the plea.[52]

To the extent appellant claimed he was unaware of the consequence of lifetime supervision, his claim is belied by the record.[53] The plea agreement, which appellant signed, 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." Therefore, the district court did not err in denying this claim.[54]

Fourth, appellant claimed that his plea was involuntary because of prosecutorial misconduct. Specifically, he claimed that the

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[51]Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002).

[52]Id. at 831, 59 P.3d at 1197.

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

[54]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 did not demonstrate that he was prejudiced as he was adequately advised of the lifetime supervision requirement.

prosecution was aware that (1) appellant may not have the opportunity to participate in certain programs at Lovelock due to class size restrictions, (2) the programs were not led by actual doctors, (3) appellant cannot be under observation until he receives a psych panel, and (4) the parole board still does not parole sexual offenders even with a favorable Psych Panel result. Appellant provided no support or evidence for his conclusion that the State prosecutor knew about the conditions of confinement or the willingness of the parole board to grant parole.[55] Further, these claims assert that the State failed to notify appellant of certain issues collateral to his plea, of which notification is not necessary for a voluntary plea.[56] Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his plea was involuntary because the decision to plead guilty was predicated on his counsel's advice that there were programs available in prison that could make appellant eligible for release prior to serving 10 years and that the plea would put him into the best light with the sentencing court. Appellant failed to demonstrate that his plea was invalid. The plea agreement, which appellant signed, informed appellant of the potential sentence he faced. The description of the sentence in the plea agreement indicated that appellant would not be eligible for parole for at least 10 years. Appellant further acknowledged in the plea agreement that he was not pleading guilty based on any promises

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[55]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[56]See Palmer, 118 Nev. at 830, 59 P.3d at 1196 (recognizing that parole is a collateral consequence of a guilty plea); see also Anushevitz v. Warden, 86 Nev. 191, 194, 467 P.2d 115, 118 (1970).

of leniency not contained in the plea agreement. Therefore, the district court did not err in denying this claim.

Sixth, appellant claimed that his plea was involuntary because his counsel led him to believe that the State was dropping charges when there was only one charge pending. Appellant failed to sustain his burden of demonstrating that his plea was invalid. The record indicates that appellant was initially charged with two counts of sexual assault of a minor under the age of 14, two counts of lewdness with a minor under the age of 14, and one count of open and gross lewdness. Appellant later pleaded guilty to one count of lewdness with a minor under the age of 14. As the State had multiple charges pending against appellant, appellant did not demonstrate that he had been misled by his counsel. Therefore, the district court did not err in denying this claim.

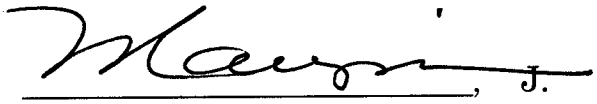
Seventh, appellant claimed that he did not understand his plea agreement. Appellant failed to demonstrate that his guilty plea was invalid. During the plea canvass, appellant acknowledged that he read, signed, and understood the plea agreement. Therefore, the district court did not err in denying this claim.

Eighth, appellant claimed that his plea was invalid because his counsel told him that lifetime supervision was merely sex offender registration. Regardless of whether appellant's counsel told appellant that lifetime supervision was essentially the same as sex offender registration, appellant did not meet his burden of showing that his plea was involuntary for this reason. "The special sentence of lifetime supervision commences after any period of probation or any term of imprisonment and

any period of release on parole."[57] Appellant agreed to a sentence of life with the possibility of parole after 10 years. As appellant's sentence, whether served entirely in prison, or to any extent on parole, does not expire by its terms, NRS 176.0931 is not triggered. Thus, appellant did not demonstrate that his plea was invalid for his failure to understand a consequence of it that he would never suffer. Therefore, 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.[58] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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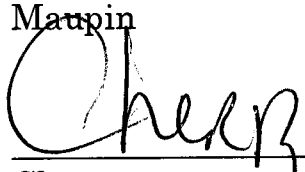
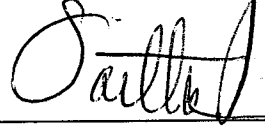


_____, J.
Cherry



_____, J.
Saitta

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[57]NRS 176.0931(2).

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

cc: Chief Judge, Eighth Judicial District
Hon. Joseph T. Bonaventure, Senior Judge
Robert Binford
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk