IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRANCE SIMON A/K/A TERRANCE TREMAYNE SIMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49725

FILED

JAN 08 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; Jackie Glass, Judge.

On January 9, 2006, the district court convicted appellant, pursuant to a guilty plea, of pandering of a child. The district court sentenced appellant to serve a term of 48 to 120 months in the Nevada State Prison. This court affirmed appellant's conviction and sentence on appeal.[1] The remittitur issued on January 30, 2007.

On March 5, 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 22, 2007, the district court denied appellant's petition. This appeal followed.

[1]Simon v. State, Docket No. 46737 (Order of Affirmance, January 5, 2007).

08-00488

In his petition, appellant claimed that the district court improperly interjected itself into the plea negotiations. Specifically, the district court judge erred in mentioning that her daughter, who was in the courtroom during the sentencing hearing, was of similar age to the victim in the instant case. This court rejected a similar claim of error regarding this comment on direct appeal. The doctrine of the law of the case prevents further litigation of this claim and cannot be avoided by a more detailed and focused argument.[2] Therefore, the district court did not err in denying this claim.

Appellant also contended that his guilty plea was involuntary. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[3] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[4] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[5]

First, appellant claimed that his plea was involuntary because the district court failed to advise him of his right to appeal. Appellant failed to demonstrate that his plea was involuntary. Appellant was informed of his limited right to appeal in his plea agreement. During the

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[2]Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

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

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

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

plea canvass, appellant acknowledged that he read and understood the plea agreement, including the section concerning the waiver of rights. We further note that appellant pursued a direct appeal to challenge the judgment of conviction in the instant case. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his plea was involuntary because the district court failed to canvass him about the elements of the crime, the factual basis for the crime, and the possible punishment he faced. The record belies appellant's assertions of fact.[6] Appellant was personally canvassed about the elements of the crime, the factual basis for the crime, and the potential maximum penalties. Moreover, this information was also contained in the plea agreement, which appellant acknowledged that he read and signed. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his plea was involuntary because the district court failed to canvass him about the meaning of an Alford[7] plea. Appellant failed to demonstrate that his plea was involuntary. In order to be knowing and voluntary, a defendant entering a plea must have notice of the charge against him.[8] Appellant was notified of the elements of the crime, the factual basis for the crime, the possible sentences, and the rights he was waiving by entering the guilty plea. Further, appellant admitted to engaging in the acts that formed the basis

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

[7]North Carolina v. Alford, 400 U.S. 25 (1970).

[8]State v. Gomes, 112 Nev. 1473, 1480, 930 P.2d 701, 706 (1996) (citing Bryant, 102 Nev. at 270, 721 P.2d at 366).

of the offense. Appellant's plea was not entered pursuant to Alford; thus, he failed to demonstrate that the district court's failure to canvass him about his understanding of an Alford plea rendered his plea involuntary. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that he was not competent to enter his plea. Appellant failed to demonstrate that his plea was involuntary. 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.'"[9] Nothing in the record indicates that appellant was not competent to enter a guilty plea. At the plea canvass, appellant responded appropriately and coherently to the district court's questions. Appellant acknowledged that he understood the rights he was waiving as those rights were set forth in the plea agreement. It is not apparent from the record that appellant was impaired or that he did not understand the district court's questions. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice such that counsel's errors were so severe that they rendered the result of the proceeding unreliable.[10] To

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

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

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.[11] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[12]

First, appellant claimed that his counsel was ineffective for coercing him into pleading guilty. Appellant failed to demonstrate that he was prejudiced. Appellant stated, in the plea agreement and during the plea canvass, that he was not pleading guilty as a result of threats or coercion. Therefore, the district court did not err in denying this claim.[13]

Second, appellant claimed that his counsel was ineffective for not investigating appellant's claims that the victim lied to appellant about her age and the victim had a criminal history of prostitution. Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. "An attorney must make reasonable investigations or a reasonable decision that particular investigations are unnecessary."[14] A petitioner asserting a claim that his counsel did not conduct a sufficient

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

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

[13]To the extent that appellant argued that his plea was involuntary because his counsel was ineffective for coercing him to plead guilty, the district court did not err in denying this claim for the reason set forth above.

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

investigation bears the burden of showing that he would have benefited from a more thorough investigation.[15]

NRS 201.300 prohibits enticing or compelling an individual by threat or violence to engage in prostitution.[16] The statute imposes a harsher penalty when an individual compels a child to engage in prostitution.[17] The statute does not require that the defendant know the victim's age in order to impose the penalty.[18] As appellant's knowledge of the victim's age was irrelevant, appellant did not show that his counsel's decision not to investigate facts related to appellant's knowledge of the victim's age was unreasonable or prejudiced him. In addition, evidence that the victim engaged in prostitution in the past does not refute that appellant compelled her to engage in prostitution in the instant case. As the evidence that appellant asserted that his counsel should have investigated was not relevant or otherwise failed to refute the charge against him, he did not demonstrate that had his counsel investigated these facts, he would not have pleaded guilty and would have insisted upon going to trial. Therefore, the district court did not err in denying this claim.[19]

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

[16]NRS 201.300(1).

[17]NRS 201.300(2)(b).

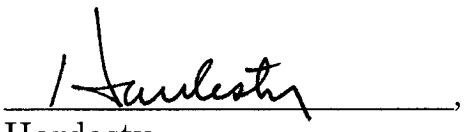
[18]Id.

[19]To the extent that appellant argued that his plea was involuntary because his counsel was ineffective for failing to investigate appellant's theory of defense, the district court did not err in denying this claim.

Third, appellant claimed that his counsel was ineffective for failing to obtain copies of the police department's lost notes and search reports. Appellant failed to demonstrate that his counsel was defective or that he was prejudiced. Appellant did not allege any specific facts about the information that counsel could have discovered from the purported documents that would have altered his decision to enter a guilty plea.[20] 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.[21] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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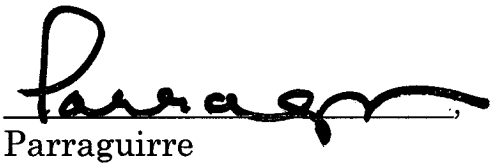
Hardesty



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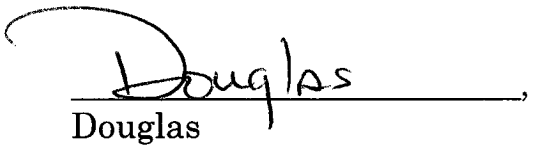

_____, J.
Douglas

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

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

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