IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE LEE POWELL, JR. A/K/A
GEORGE LEE POWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50007

FILED

DEC 21 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; Donald M. Mosley, Judge.

On October 19, 2006, the district court convicted appellant, pursuant to a guilty plea, of burglary and grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life with possibility of parole after 10 years in the Nevada State Prison. Appellant did not file a direct appeal.

On March 29, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On July 16, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel and that he did not enter the guilty plea knowingly and voluntarily.

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.[1] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[2] A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[3] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[4]

Appellant contended that his counsel assured him that if he pleaded guilty, he would receive a favorable sentence. Appellant further claimed that due to his counsel's failure to adequately advise him of the range of sentences which could be imposed, appellant did not enter the guilty plea knowingly and voluntarily. These claims are without factual support.[5] Appellant acknowledged in the written guilty plea agreement and at the plea canvass that the State retained the right to seek habitual

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

[2]Strickland v. Washington, 466 U.S. 668, 697 (1984).

[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).

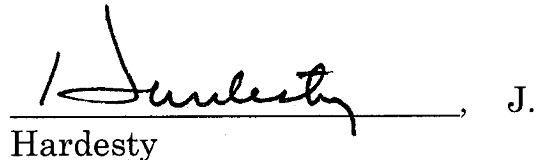
[4]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

[5]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (stating a petitioner is not entitled to an evidentiary hearing on claims that are belied by the record).

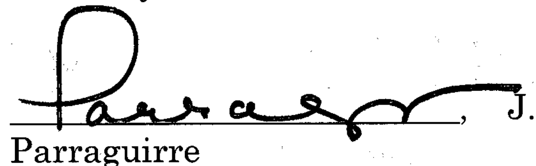
criminal adjudication, and if so adjudicated, appellant could receive a sentence of 10 years to life. Appellant also acknowledged in the written guilty plea agreement and at the plea canvass that his sentence was to be determined by the court and he entered the guilty plea agreement knowingly and voluntarily. Appellant's subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[6] Accordingly, the district court did not err in denying appellant's claims, and we affirm the denial of 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.[7] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_______________, J.
Hardesty



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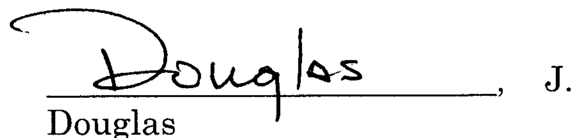

_______________, J.
Douglas

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

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

cc: Hon. Donald M. Mosley, District Judge
George Lee Powell Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk