

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARNOLD GOMEZ A/K/A ARNOLDO  
GOMEZ-BANDERAS A/K/A ARNOLD  
GOMEZ BANDERAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50071

**FILED**

FEB 13 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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; Michelle Leavitt, Judge.

On September 29, 2006, the district court convicted appellant, pursuant to a guilty plea, of second-degree murder and attempted murder with the use of a deadly weapon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after ten years for murder and two consecutive terms of eight to twenty years for attempted murder with the use of a deadly weapon. Appellant's sentences for attempted murder with the use of a deadly weapon were imposed concurrent to his sentence for murder. Appellant did not file a direct appeal.

On March 1, 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, the district court declined to appoint counsel to represent appellant. The district court denied appellant's petition on August 21, 2007, after conducting an evidentiary hearing. This appeal followed.<sup>1</sup>

In his petition, appellant claimed that his guilty plea was not entered knowingly or intelligently. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>2</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>3</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>4</sup>

Appellant claimed that his guilty plea was not entered knowingly or intelligently because he is a Spanish speaker with a sixth-grade education. Appellant asserted that although the written plea

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<sup>1</sup>To the extent that appellant appeals from the district court's denial of his motion for transcripts at state expense, we conclude the district court did not err by denying the motion. Appellant failed to demonstrate that his claims had merit. See Peterson v. Warden, 87 Nev. 134, 438 P.2d 204 (1971).

<sup>2</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>3</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

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

agreement and plea canvass were translated for him, he did not fully understand the plea agreement. Appellant stated he understood that under the plea agreement he would be eligible for parole after ten years and he would receive concurrent sentences.

The record indicates that appellant understood the possible sentences he was facing. Appellant was specifically informed that he was facing a term of two to twenty years for the attempted murder and an equal and consecutive term for the deadly weapon enhancement. Appellant asked specific questions about the sentences he could receive and indicated he understood that the district court could impose all of his sentences to run consecutively. Appellant failed to demonstrate that his plea was not entered knowingly and intelligently under a totality of the circumstances. Therefore, we conclude the district court did not err by 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 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>5</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>6</sup> "[A] habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence."<sup>7</sup> Factual findings of the district court that are supported by substantial evidence and are not clearly wrong are entitled to deference when reviewed on appeal.<sup>8</sup>

First, appellant claimed that counsel was ineffective because counsel did not conduct a proper investigation and was not ready for trial. Appellant failed to articulate what investigation counsel should have undertaken that would have altered his decision to plead guilty.<sup>9</sup> Therefore, he failed to demonstrate that counsel was ineffective, and we conclude the district court did not err by denying this claim.

Second, appellant claimed that counsel was ineffective for misleading him about his parole eligibility. Appellant asserted that

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<sup>5</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>6</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>7</sup>Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

<sup>8</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>9</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that an appellant is not entitled to an evidentiary hearing based on bare or naked claims for relief).

counsel informed him that he would be eligible for parole after ten years. Even assuming counsel misstated his parole eligibility, appellant failed to demonstrate prejudice. The record reveals that the district court explained the sentences that appellant was facing and specifically informed appellant that, even if his sentences were imposed to run concurrently, the deadly weapon enhancement had to run consecutive to the primary offense of attempted murder. The district court further explained that for attempted murder with the use of a deadly weapon appellant would be sentenced within the range of four to forty years. Appellant indicated that he understood that the district court could impose his sentences to run consecutively. Additionally, appellant indicated that he had not been promised any specific sentence. Therefore, we conclude the district court did not err by denying this claim.

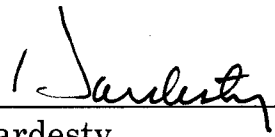
Third, appellant claimed that counsel was ineffective for failing to inform him about the deadly weapon enhancement. The record indicates that the district court thoroughly informed appellant about the deadly weapon enhancement and answered all of appellant's questions about sentencing before accepting appellant's guilty plea. Therefore, appellant failed to demonstrate that counsel was ineffective, and we conclude the district court did not err by denying this claim.

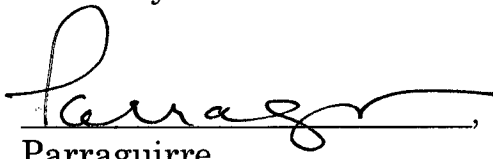
Finally, appellant claimed that counsel was ineffective for failing to file a direct appeal. The district court held an evidentiary hearing on this claim. Counsel testified that appellant did not ask him to file an appeal. Appellant stated that he asked counsel to send him his file

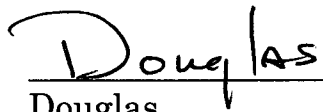
so he could continue to fight his conviction, but he did not ask counsel to file an appeal on his behalf. The district court determined that appellant did not ask counsel to file an appeal, and thus, counsel was not ineffective for failing to do. The district court's determination was supported by substantial evidence and was not clearly wrong. Therefore, we conclude the district court did not err by 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.<sup>10</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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

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