

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMMY MARVIN HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50285

FILED

APR 25 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 a motion to withdraw a guilty plea and a motion for a new trial. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On December 22, 2003, the district court convicted appellant, pursuant to a jury trial, of trafficking in a controlled substance, and, pursuant to a guilty plea, of two counts of possession of a firearm by an ex-felon. The district court sentenced appellant to serve a term of life in the Nevada State Prison with the possibility of parole after 10 years for the trafficking conviction. The district court sentenced appellant to serve two concurrent terms of 12 to 48 months for the possession of a firearm by an ex-felon counts, to run consecutive to the trafficking count. This court affirmed appellant's judgment of conviction and sentence on appeal.¹ The remittitur issued on February 7, 2006.

On August 29, 2006, appellant filed a proper person post-conviction motion to withdraw a guilty plea in the district court. On July

¹Harris v. State, Docket No. 42695 (Order of Affirmance, January 10, 2006).

10, 2007, appellant, with the assistance of counsel, filed a motion for a new trial. The State opposed the motions, and appellant, in proper person, filed a response to the opposition to the motion to withdraw a guilty plea. On September 10, 2007, the district court denied appellant's motions. This appeal followed.

Motion to withdraw a guilty plea

In his motion to withdraw a guilty plea, appellant argued that his plea was not entered knowingly and intelligently because his counsel failed to inform him that by pleading guilty, his right to appeal the possession of firearm convictions would be limited to constitutional grounds.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.² Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁴

Our review of the record on appeal reveals that the district court did not err in denying this motion.⁵ There is no constitutional

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

³Hubbard, 110 Nev. at 675, 877 P.2d at 521.

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

⁵Appellant raised additional claims of ineffective assistance of counsel in his motion. However, these other claims appear to address the count of trafficking in a controlled substance, to which appellant did not plead guilty. Accordingly these claims are better suited for a post-conviction petition for a writ of habeas corpus and on that basis, we conclude the district court did not err in denying these claims. We express

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requirement that counsel must inform the defendant who pleads guilty of the right to pursue a direct appeal unless a defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success in this particular case.⁶ Nothing in the record suggests that a direct appeal of the possession of firearm convictions had a reasonable likelihood of success. Moreover, by pleading guilty, appellant was not precluded from filing a direct appeal. Rather a direct appeal from a judgment of conviction based upon a guilty plea is limited in scope to “reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings” and those grounds permitted pursuant to NRS 174.035(3).⁷ Therefore, counsel’s alleged failure to explain the issues appellant could appeal from did not invalidate the plea.

Motion for a new trial

In his motion for a new trial, appellant contended that he is entitled to a new trial pursuant to NRS 176.515(4) based on conflicting evidence of guilt presented at trial. NRS 176.515(4) provides that “[a] motion for a new trial based on any other grounds [other than newly discovered evidence] must be made within [seven] days after the verdict or finding of guilt.”⁸ Here, appellant filed his motion approximately 4 years

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no opinion as to whether a petition could satisfy the procedural requirements of NRS chapter 34.

⁶See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

⁷See NRS 177.015(4); see also Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994); overruled on other grounds by Thomas, 115 Nev. 148, 979 P.2d 222 (1999).

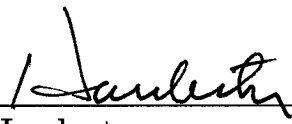
⁸NRS 176.515(4).

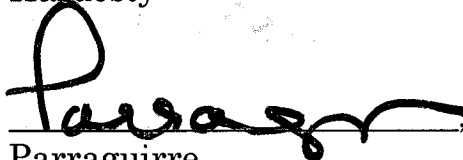
after entry of the judgment of conviction. Because the motion was untimely, the district court did not err in denying appellant's motion for a new trial.


Conclusion

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Sally L. Loehrer, District Judge
Sammy Marvin Harris
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk