

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. JONES A/K/A ABDULAH
JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50492

FILED

APR 18 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 post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On September 26, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of second-degree murder with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole. No direct appeal was taken.

On June 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. 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 October 12, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his guilty plea was not entered knowingly or voluntarily. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not

entered knowingly and intelligently.¹ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.² In determining the validity of a guilty plea, this court looks to the totality of the circumstances.³

First, appellant claimed that his guilty plea was the product of coercion. Appellant claimed that he entered a guilty plea because trial counsel appeared unprepared for trial, failed to adequately visit with appellant, and informed him that he could receive the death penalty or a sentence of life without the possibility of parole if he went to trial. Based upon our review of the record on appeal, we conclude that appellant failed to carry his burden in this regard. At the guilty plea canvass, appellant affirmatively indicated that he was entering his plea freely and voluntarily. Further, in signing the guilty plea agreement, appellant acknowledged that his guilty plea was not the product of duress or coercion. During the guilty plea canvass, appellant further acknowledged that he had discussed the case with his trial counsel and that trial counsel had answered all his questions. Appellant failed to set forth any specific facts or argument demonstrating that further preparation and conversations with trial counsel would have had a reasonable probability

¹Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

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

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

of altering his decision to enter a guilty plea.⁴ Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his guilty plea was not entered knowingly and voluntarily because he did not have an understanding of the consequences or the nature of the charge. Appellant further claimed that he was not specifically informed of the right to have a jury determine the deadly weapon enhancement. Finally, appellant claimed that the plea canvass was robotic and scripted and did not delve into appellant's state of mind. Based upon our review of the record on appeal, we conclude that appellant failed to carry his burden in this regard. Appellant was informed of the potential sentence, including the deadly weapon enhancement, during the plea canvass and in the plea agreement. The written plea agreement, which appellant acknowledged reading, signing and understanding, specifically informed appellant that he waived his right to a jury trial. The charge was set forth in an information attached to the criminal information and appellant made a factual admission during the plea canvass. In the written plea agreement, appellant further acknowledged that his trial counsel had explained the consequences of the guilty plea, the charge against him, and the waiver of constitutional rights. Therefore, we conclude that 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, a petitioner must demonstrate that his counsel's performance was deficient

⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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, there is a reasonable probability of a different outcome in the proceedings.⁵ To demonstrate prejudice sufficient to invalidate the decision to enter a guilty plea, a petitioner must show that the petitioner would not have pleaded guilty and would have insisted on going to trial.⁶ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁷

First, appellant claimed that his trial counsel was ineffective for failing to explain different courses of action. Appellant claimed that had his case been presented before a jury there was a possibility of being convicted of a lesser sentence and receiving a lesser penalty. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to set forth what further explanation was required or demonstrate that there was a reasonable probability of a lesser sentence or penalty had the matter gone to trial. Therefore, we conclude that the district court did not err in denying appellant's claim.

Second, appellant claimed that his trial counsel was ineffective for failing to consult with him regarding his appeal rights. Appellant claimed that he desired an appeal and that he did not waive the

⁵See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁶Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁷Strickland, 466 U.S. at 697.

right to an appeal. Appellant claimed that trial counsel told him he had no right to appeal his guilty plea and did not ascertain appellant's wishes regarding an appeal. Appellant claimed that the failure to file a notice of appeal was without his consent. Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that he was prejudiced. The guilty plea agreement, which appellant acknowledged reading, signing and understanding, informed appellant of his limited right to appeal.⁸ Notably, in Nevada, there is no requirement that trial counsel inform a criminal defendant of the right to a direct appeal when the conviction is based upon a guilty plea.⁹ Appellant did not claim that he asked trial counsel to file an appeal and that counsel refused to do so.¹⁰ Appellant further failed to demonstrate that trial counsel was obligated to file a notice of appeal due to the existence of a direct appeal claim with a reasonable likelihood of success.¹¹ Finally, trial counsel was correct that appellant could not challenge the validity of his guilty plea on direct appeal in the instant case.¹² Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed: (1) the district court erred in imposing the sentence without conducting a separate penalty hearing; (2) the juvenile court erred in transferring the matter to the district court

⁸See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

⁹See Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

¹⁰See id.

¹¹See id.

¹²See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

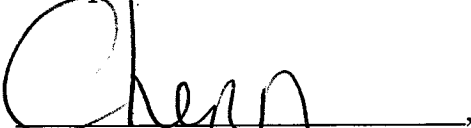
without making an initial determination regarding the prosecutorial merits of the case; (3) his rights were violated when his parents were not notified or present during his interrogation; and (4) his rights were violated when his probation officer in a juvenile case was not present during his interrogation. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.¹³ Therefore, we conclude that the district court did not err in denying 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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

¹³See NRS 34.810(1)(a).

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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