

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON WAYNE SHERMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50906

FILED

AUG 29 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 dismissing a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On July 14, 2006, the district court convicted appellant Brandon Wayne Sherman, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 24 to 60 months for the robbery count and a consecutive term of 24 to 60 months for the deadly weapon enhancement in the Nevada State Prison. No direct appeal was taken.

On April 30, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On that same date, appellant filed a motion for the appointment of counsel. On October 3, 2007, the State filed a motion to dismiss. 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 December

14, 2007, the district court dismissed appellant's petition. This appeal followed.¹

In his petition, appellant claimed that his plea was invalid. 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

First, appellant claimed his plea was coerced by his trial counsel and that he was not sufficiently informed of the consequences he faced with a guilty plea. Appellant failed to carry his burden of demonstrating that his plea was invalid. Appellant acknowledged in the guilty plea memorandum that his guilty plea was voluntary, that he signed with the advice of counsel, and that his plea was "not the result of any threats, coercion or promises of leniency." At the plea canvass, appellant acknowledged that his plea was given freely and voluntarily, without threats or promises. In addition, at the plea canvass, appellant was informed of the potential sentences he could receive, for both the

¹We conclude that the district court did not abuse its discretion in declining his request for appointment of counsel. See NRS 34.750.

²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

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

⁴State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

robbery count and the deadly weapon enhancement. Therefore, appellant failed to demonstrate that his plea was coerced or that he was not adequately informed of the consequences of his plea, and we conclude that the district court did not err in denying this claim.

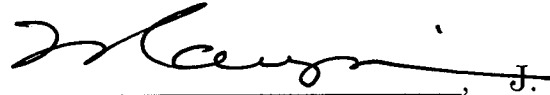
Second, appellant claimed that his plea was invalid because he did not understand the elements of the robbery charge or the deadly weapon enhancement. On this claim, appellant failed to carry his burden of demonstrating that his plea was invalid. The guilty plea agreement contained the elements of both the robbery charge and the deadly weapon enhancement. In addition, the State read the elements of both the robbery charge and the deadly weapon enhancement at the plea canvass. The district court then asked appellant if there was anything about the charges that he did not understand, and appellant responded, "No, sir." Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his plea was invalid because the district court failed to inform him of his constitutional right to a jury trial regarding the deadly weapon enhancement. Appellant failed to carry his burden of demonstrating that his plea was invalid. In the guilty plea memorandum, appellant acknowledged that he understood and waived his right to a trial by jury. At the plea canvass, the district court discussed the right to a trial by jury with appellant, appellant acknowledged that he understood the right to a trial by jury and he waived that right. Thus, appellant failed to demonstrate that the district court did not inform him of his constitutional right to a trial by jury. Further, the district court was permitted to apply the deadly weapon enhancement to the robbery

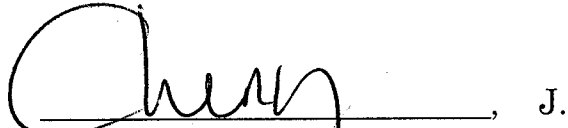
sentence based upon appellant's guilty plea.⁵ Therefore, we conclude that the district court did not err in denying this claim.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Maupin



Cherry



Saitta

cc: Hon. Brent T. Adams, District Judge
Brandon Wayne Sherman
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁵Blakely v. Washington, 542 U.S. 296, 303-04 (2004).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).