

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN A. ZABOROWSKI,

No. 34598

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAY 16 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF 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.

On November 16, 1998, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under the age of 14. The district court sentenced appellant to serve two concurrent terms of six years in the Nevada State Prison. Appellant did not file a direct appeal.

On April 29, 1999, 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 August 3, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his counsel was ineffective for: (1) not obtaining facts relevant to the case, (2) not discussing possible defenses, (3) providing appellant with erroneous information about the psychiatric evaluation, and (4) failing to show up to court. Based upon our review of the record on appeal, we conclude that the district

Second, appellant argued that his right to a speedy trial was violated. We conclude that the district court did not err in rejecting this claim. Appellant waived the right to a speedy trial by entry of his guilty plea.

Third, appellant argued that his counsel was ineffective for bargaining to alter the dates of the crime so that appellant would receive the benefit of a fixed term ranging from one to ten years provided for by NRS 201.230 prior to amendments in 1995 and 1997.<sup>2</sup> Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. Appellant failed to demonstrate any prejudice.<sup>3</sup> Appellant avoided seven potential life sentences by pleading guilty to the criminal information as amended. Thus, the alteration of the dates of the offenses benefited appellant.

Fourth, appellant argued that his counsel failed to inform him of his right to a direct appeal. We conclude that appellant has not demonstrated he is entitled to relief. This court has held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" absent extraordinary circumstances.<sup>4</sup> Appellant failed to demonstrate any such extraordinary circumstances in this case. Further, based upon our independent review of the record, we conclude that appellant is not otherwise entitled to relief on the basis of this claim. Further, the record demonstrates that appellant otherwise knew of his right to a direct appeal.<sup>5</sup> The written guilty plea

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<sup>2</sup>1995 Nev. Stat., ch. 443, §§ 89, 393, 394, at 1200, 1340; 1997 Nev. Stat., ch. 455, §§ 5, 9, at 1722-1723; 1999 Nev. Stat., ch. 105, § 49, at 470-72.

<sup>3</sup>Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

<sup>4</sup>Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223

agreement, which appellant acknowledged reading and signing, informed appellant of his limited right to a direct appeal.<sup>6</sup>

Fifth, appellant claimed that his counsel failed to adequately advise him of the rights he waived by entry of his plea and failed to discuss the elements of the offense. Based upon our review of the record on appeal, we conclude that the district court did not err in denying these claims. The written guilty plea agreement, which appellant acknowledged reading and signing, informed appellant of the rights he waived by entry of his guilty plea and the elements of the offense. Further, during the plea canvass, appellant made factual admissions to the lewdness crimes.

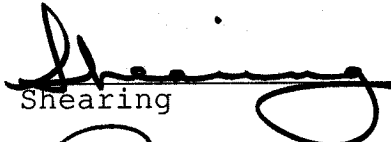
Finally, appellant argued that his plea was involuntary because it was the product of coercive tactics. Specifically, appellant argued that his counsel coerced his plea by: (1) bargaining to change the dates of the crimes to benefit appellant, (2) allowing appellant to plead despite appellant's claim of innocence to the charges, (3) allowing appellant to sign a written guilty plea agreement containing the wrong dates, (4) telling appellant that if he did not take the deal the State was going to amend the charges to include one count of sexual assault with a minor under the age of 14, and (5) allegedly informing appellant that the plea was no good and that "we just have to go through the motions."


A guilty plea is presumptively valid, and an appellant carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>7</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>8</sup> Based upon our review of the record on appeal, we conclude that appellant failed


entered knowingly and intelligently. The alteration of the dates of the offenses benefited appellant by allowing appellant to avoid seven potential life sentences. Appellant made factual admissions to the offenses during the plea canvass, thus appellant's claim of innocence lacks credibility. Finally, the record does not support appellant's claim that his counsel informed him that the plea was not valid.

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>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Rose

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Steven A. Zaborowski  
Clark County Clerk