


IN THE SUPREME COURT OF THE STATE OF NEVADA

COLLIS D. MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51110

FILED

SEP 12 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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; Stewart L. Bell, Judge.

On October 24, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of theft (Category C felony). The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. No direct appeal was taken.

On November 5, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 January 31, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his guilty 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.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

Appellant claimed that he was led to believe that the State was going to drop the felony charge and that he would plead guilty to a misdemeanor or a petty theft charge. Appellant further claimed that the felony charge was improper because the value of the property taken was only \$240, but with sales tax the value of the property was valued at \$256.50.

Appellant failed to carry his burden of demonstrating that his plea was invalid. The written guilty plea agreement, which appellant acknowledged reading, signing and understanding, indicates that appellant was entering a guilty plea to a Category C felony theft charge and informed appellant of the penalty for the felony-level theft. The declaration of arrest indicates that the value of the items "taken before taxes was \$256.50." By entering a guilty plea, appellant waived having the State prove the value of the items taken by proof beyond a reasonable doubt. Further, in exchange for his guilty plea to one count of theft, the State agreed not to seek habitual criminal treatment and not to oppose the

¹Bryant 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).


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


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


dismissal of five additional cases. 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.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Maupin


_____, J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Collis D. Martin
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).