IN THE SUPREME COURT OF THE STATE OF NEVADA

TYSON ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51331

FILED

DEC 02 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On January 29, 2007, the district court convicted appellant, pursuant to a guilty plea, of three counts of driving under the influence of a controlled substance causing death or substantial bodily harm, and one count of leaving the scene of an accident, in district court case number C233076. The district court sentenced appellant to serve three consecutive terms of 43 to 192 months (16 years) in the Nevada State Prison for the DUI counts and a consecutive term of 24 to 72 months for the count of leaving the scene of an accident. No direct appeal was taken.

On December 13, 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 March 26, 2008, the district court denied appellant's petition. This appeal followed.

First, appellant claimed that his guilty plea was entered unknowingly and involuntarily. 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 his guilty plea was not entered into knowingly or intelligently because he was misled about the maximum sentences he was facing. Specifically, he claimed that the guilty plea agreement he signed stated that the crimes to which he was pleading guilty carried a maximum penalty of only 15 years, when in fact the maximum sentence was 20 years. We conclude that appellant failed to establish that his plea was entered unknowingly. Appellant's claim is belied by the record. In support of his claim appellant submitted two pages of an unfiled, unsigned guilty plea agreement from case no. C223126A. In that case, appellant pleaded guilty to trafficking in a controlled substance, with a maximum sentence of 15 years. As part of that plea agreement he also agreed to plead guilty to three DUI counts and one count of leaving the scene of an accident in case no. C223076, the instant case. The guilty plea agreement in case no. C223076, which was

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[1]Bryant 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).

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

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

signed by appellant and filed on November 7, 2006, accurately stated that the maximum penalty for the DUI counts was 20 years. Appellant signed the written guilty plea agreement and informed the district court that he had read and understood the contents of the written guilty plea agreement. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient 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, petitioner would not have pleaded guilty and would have insisted on going to trial.[4] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[5]

Appellant claimed that his trial counsel was ineffective for failing to accurately inform him of the maximum sentences he was facing. Appellant failed to demonstrate that trial counsel's performance was deficient or that he was prejudiced. Appellant's claim was based on the premise that the guilty plea agreement incorrectly stated the maximum penalties for his crimes. However, as stated above, appellant failed to demonstrate that his plea agreement contained any errors. Moreover, appellant signed the written guilty plea agreement and informed the

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[4]Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

[5]Strickland v. Washington, 466 U.S. 668, 697 (1984).

district court that he had read and understood its contents, and thus appellant failed to demonstrate that but for counsel's alleged error, he would have proceeded to trial. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that his appellate counsel was ineffective. "A claim of ineffective assistance of appellate counsel is reviewed under the 'reasonably effective assistance' test set forth in Strickland v. Washington."[6] Appellate counsel is not required to raise every non-frivolous issue on appeal.[7] This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal.[8] "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."[9]

Appellant claimed that his appellate counsel was ineffective for failing to appeal on the grounds that his three 16-year sentences were in excess of the penalties listed in the plea agreement. Appellant failed to demonstrate that appellate counsel's performance was deficient. As stated above, the guilty plea agreement correctly stated that the DUI counts carried a maximum sentence of 20 years in the Nevada State Prison. Thus, appellant's three 16-year sentences were not in excess of those

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[6]Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996) (citing Strickland, 466 U.S. 668 (1984)).

[7]Jones v. Barnes, 463 U.S. 745, 751 (1983).

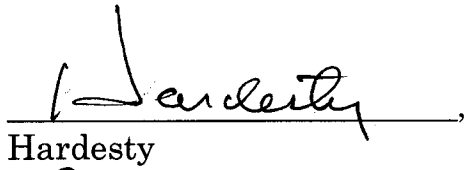
[8]Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

[9]Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

stated in the agreement. And in his petition, appellant admitted that the sentences are within statutory guidelines. Therefore, 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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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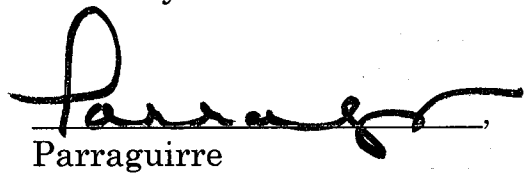

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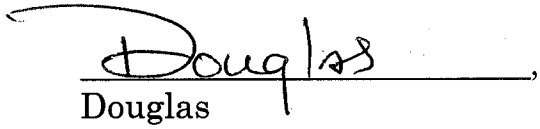

_____, J.
Douglas

cc: Hon. Valerie Adair, District Judge
Tyson Robinson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[10]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).