


IN THE SUPREME COURT OF THE STATE OF NEVADA

LEANDREW LARONN MENEFEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51999

**FILED**

JAN 15 2009

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; David Wall, Judge.

On August 29, 2006, the district court convicted appellant, pursuant to an Alford plea, see North Carolina v. Alford, 400 U.S. 25 (1970), of one count of living off the earnings of a prostitute, and one count of attempted use of a minor in producing pornography. The district court sentenced appellant to serve a term 12 to 36 months and a consecutive term of 36 to 120 months in the Nevada State Prison. Menefee v. State, Docket No. 48013 (Order of Affirmance, March 1, 2007). This court affirmed the judgment of conviction on appeal. The remittitur issued on March 28, 2007.

On March 10, 2008, 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 June 13, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of trial counsel. 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 of a different outcome but for counsel's errors. See Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). In order to establish prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland, 466 U.S. at 697.

Appellant claimed that trial counsel was ineffective for "inducing" him to plead guilty by misinforming appellant that if probation was not recommended, he would withdraw appellant's Alford plea. Appellant failed to demonstrate that he was prejudiced. The guilty plea agreement, signed by appellant, informed appellant that the district court determined whether appellant would receive probation, and that he had not been promised any particular sentence. During the hearing to accept his Alford plea, appellant indicated that he had completed two years of community college, and had read and understood the agreement. Further, at the plea canvass, appellant indicated that other than the plea negotiations, no one had made any other promises in order to induce him

to plead guilty. Therefore, at the time appellant entered his Alford plea, appellant was aware that the decision of whether to award probation was within the discretion of the sentencing court, and had certified to the court that no one had made any other promises to induce his guilty plea. Accordingly, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that his appellate counsel was ineffective. To state a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923 P.2d at 1114. Appellate counsel is not required to raise every non-frivolous issue on appeal. Jones v. Barnes, 463 U.S. 745, 751 (1983). This court has held that appellate counsel will be most effective when every conceivable issue is not raised on appeal. Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

Appellant argued that appellate counsel was ineffective for failing to argue that his guilty plea was involuntary, and induced by misrepresentations of counsel.<sup>1</sup> Appellant failed to demonstrate that he was prejudiced. A claim challenging the validity of a guilty plea may not generally be raised on direct appeal. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). As further discussed above, the plea

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<sup>1</sup>Marc Saggese represented appellant at the preliminary hearing; Dean Kajioka represented appellant in the district court and on direct appeal.

agreement and transcript of the plea canvass indicated that at the time appellant entered his Alford plea, appellant was aware that the decision of whether to award probation was within the discretion of the sentencing court, and had certified to the court that no one had made any other promises to induce his guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

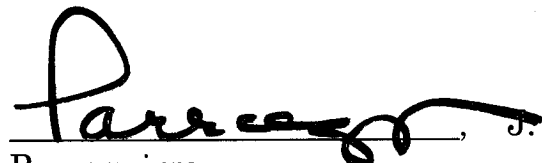
Finally, appellant argued that his guilty plea was involuntary. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Id.; see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

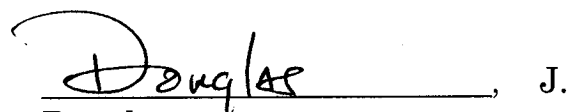
Appellant argued that his plea was involuntary because he was "coerced" to enter the plea due to the State's introduction of "fabricated" testimony by the victim at the preliminary hearing. Essentially, appellant claimed that the State promised to release the victim from jail if she testified against the appellant, causing her to fabricate her testimony. Appellant further claimed that the victim tried to extort money from him during the course of court proceedings. We conclude that appellant failed to carry his burden on this claim. Appellant's attorney cross-examined the victim at the preliminary hearing, and she freely admitted that her release from jail was contingent upon her testifying at the preliminary hearing. However, she also stated

that State's only instruction to her had been to answer any questions honestly, and that she had done so. Beyond his blanket allegations, appellant offered no evidence to support his assertion that the victim fabricated her testimony or that that the victim attempted extortion. Accordingly, 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. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Douglas, J.

  
Pickering, J.

cc: Hon. David Wall, District Judge  
Leandrew Laronn Menefee  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk