

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN ROBERT HALVERSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52000

FILED

APR 21 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Steven Halversen's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On December 13, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery and one count of robbery with the use of a deadly weapon. Pursuant to NRS 207.010(1)(a), the district court adjudicated appellant a habitual criminal and sentenced appellant to serve two consecutive terms of 84 to 216 months in the Nevada State Prison. No direct appeal was taken.

On March 6, 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, the district court declined to appoint counsel to represent appellant. Following an evidentiary hearing, the district court denied appellant's petition on August 26, 2008. This appeal followed.

In his petition, appellant first argued 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. 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). 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 claimed that his guilty plea was invalid because he was not aware that the district court had the authority to sentence him to consecutive terms. In support of this argument, appellant claimed that the original guilty plea agreement stated that "both counts are to run concurrent to one another," and that this language was crossed out without his consent. We conclude that appellant failed to carry his burden on this claim. Appellant's initials appear in the margin acknowledging the changed language. Despite appellant's arguments that this change was not made when he initialed the document, his attorney, Kenneth Frizzel, testified that the interlineation was made before appellant initialed it. Mr. Frizzel also testified that while the State had offered concurrent terms during initial plea negotiations, the State took that offer off the table as the trial date approached, and he discussed that change with appellant. In addition, we note that the guilty plea agreement signed by appellant acknowledged that appellant had not been promised or guaranteed any

particular sentence, and that appellant was aware that his sentence was to be determined by the district court. At the plea canvass, appellant acknowledged that he had read and understood the plea agreement. Therefore, at the time appellant entered his guilty plea, he was aware that the district court could sentence him to consecutive terms. Accordingly, we conclude that the district court did not err in denying this claim.

Next, appellant claimed 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 first claimed that trial counsel was ineffective for not arguing at sentencing that the plea agreement provided for concurrent sentences. Appellant failed to demonstrate that counsel was ineffective. As indicated above, the plea agreement made no recommendation regarding whether appellant's sentences were to run consecutively or

concurrently. Appellant failed to demonstrate a reasonable probability of a different outcome had trial counsel argued for concurrent sentencing. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective because appellant filed a grievance against counsel with the State Bar several days prior to sentencing, creating a conflict of interest. Appellant failed to demonstrate that counsel was ineffective, or that he was prejudiced. In an affidavit submitted to the district court, counsel stated that the State Bar never opened any formal grievance as a result of the appellant's complaint, and that the complaint had no effect on his representation of appellant at sentencing. Beyond his blanket assertion, appellant has not indicated how counsel would have acted differently had appellant not filed the grievance. Therefore, the district court did not err in denying this claim.

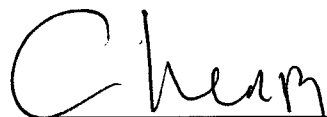
Third, appellant claimed that trial counsel was ineffective for proceeding with plea negotiations after the district court stated that it would not allow any negotiations past calendar call. Appellant failed to demonstrate that counsel was ineffective. While District Judge Donald Mosley initially indicated that he would allow no plea negotiations past calendar call, District Judge Joseph Bonaventure substituted for Judge Mosley at calendar call, and indicated that he would be willing to accept a plea bargain. Counsel testified that he believed these negotiations to be in appellant's best interest, and appellant ultimately decided that it was in his best interest to take the plea agreement. Therefore, the district court did not err in denying this claim.

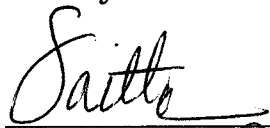
Fourth, appellant argued that trial counsel was ineffective for making false promises and “coercing” him into entering the plea agreement. Appellant claimed that counsel promised him that if he pleaded guilty, he would receive a sentence of five to twelve and a half years. He also argued that counsel coerced him into pleading guilty by stating that if he lost at trial, he would likely receive a sentence of life without parole pursuant to the large habitual criminal statute. Appellant failed to demonstrate that counsel was ineffective or that he was prejudiced. If appellant proceeded to trial, the State had indicated its intent to seek enhancement pursuant to NRS 207.010. The State’s notice listed five prior felony convictions, indicating that appellant was potentially subject to treatment as a large habitual criminal under NRS 207.010(b). Counsel was not ineffective for making appellant aware of the potential consequences of proceeding to trial. Further, as discussed above, the guilty plea agreement signed by appellant acknowledged that appellant had not been promised or guaranteed any particular sentence, and that appellant was aware that his sentence was to be determined by the district court. The agreement also certified that appellant was not acting under duress, coercion, or as a result of any promises of leniency. Therefore, even if counsel had indicated that he believed appellant would likely receive a sentence of five to twelve years pursuant to the plea agreement, appellant has failed to indicate how he was prejudiced by this alleged statement. Accordingly, the district court did not err in denying this claim.

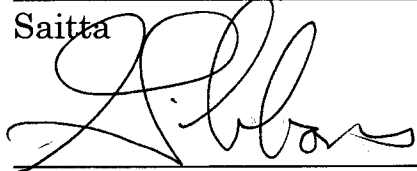
Having reviewed the record on appeal and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

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.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Steven Robert Halversen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.