

IN THE SUPREME COURT OF THE STATE OF NEVADA

JON ROBERTSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52574

FILED

MAY 12 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On January 17, 2007, the district court convicted Robertson, pursuant to a guilty plea, of one count of attempted pandering of a child. The district court sentenced Robertson to serve a prison term of 18 to 48 months. Robertson did not file a direct appeal.

On December 27, 2007, Robertson filed a post-conviction petition for a writ of habeas corpus in the district court. The State filed a response. The district court conducted an evidentiary hearing and subsequently entered findings of fact, conclusions of law, and an order denying Robertson's petition. This appeal followed.

Robertson contends that "[t]he court erred when it found that the defendant knowingly and intelligently entered the guilty plea in this case" and when it "determined that there were no errors made although the appellant testified that the trial counsel did not do the things as mentioned in the petition for [a] writ of habeas corpus." Robertson asserts

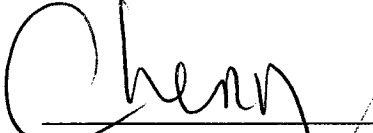
that “[t]he record is very clear that [he] was hesitant to plead guilty” and that “the failures of prior counsel amounted to performance that was deficient and so prejudiced the petitioner.” However, Robertson fails to state how the district court erred, why the guilty plea is invalid, and why counsel’s performance was deficient and prejudicial.

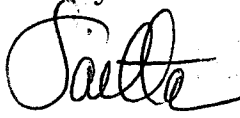
“[G]uilty pleas are presumptively valid, especially when entered on advice of counsel, and a defendant has a heavy burden to show the district court that he did not enter his plea knowingly, intelligently, or voluntarily.” Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). To determine whether the defendant entered his plea knowingly, intelligently, and voluntarily, the district court must consider the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). “On appeal from the district court’s determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court’s determination absent a clear showing of an abuse of discretion.” Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).


To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel’s performance was deficient, and that the petitioner was prejudiced by counsel’s performance. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). The district court’s factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Here, following an evidentiary hearing, the district court found that Robertson's plea was freely and voluntarily given and that he received effective assistance of counsel. Robertson has not shown that these findings are wrong or constitute a clear abuse of discretion. Our review of the record on appeal, and particularly the guilty plea memorandum, transcript of the plea canvass, and transcript of the evidentiary hearing, reveals that substantial evidence supports the district court's findings. We conclude that Robertson has not met his burden to demonstrate that the district court erred in denying the writ petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

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