

IN THE SUPREME COURT OF THE STATE OF NEVADA

ECHO FAWN POWERS,
Appellant,
vs.
WARDEN, SHERYL FOSTER, NEVADA
DEPARTMENT OF CORRECTIONS,
Respondents.

No. 52894

FILED

JUL 07 2009

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Echo Powers' post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On February 20, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count each of forgery, theft, and burglary. The district court sentenced appellant to two terms of 19 to 48 months in the Nevada State Prison for the forgery and theft counts, and a term of 36 to 120 months for the burglary count, all to be served concurrently. No direct appeal was taken.

On October 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 November 12, 2008, the district court denied appellant's petition. This appeal followed.

Validity of guilty plea

First, appellant claimed that her 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 her guilty plea was not entered knowingly and intelligently because she was not fully apprised of the elements of burglary. Had she known these elements, appellant contended that she would not have pleaded guilty, because she did not enter the Double Dice Bar with the intent to commit a crime, and was arguably the lawful owner of the account upon which the disputed check was written. Having reviewed the record on appeal, we conclude that this claim lacks merit. The guilty plea agreement, signed by appellant, acknowledged that appellant had discussed the elements of all charges against her with her attorney. The district court minutes of the plea canvass further indicate that appellant was apprised of the elements of each of the crimes charged, and appellant acknowledged that she understood those elements. Accordingly, we conclude that the district court did not abuse its discretion in denying this claim.

Appellant also claimed that her guilty plea was invalid because the plea was coerced. However, appellant cited no facts to support this claim. A petitioner is not entitled to relief based on "bare" or "naked" claims. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Rather, the petitioner bears the burden of alleging specific facts which, if true, would entitle the petitioner to relief. Id. at 502-503, 686 P.2d at 225; see also NRS 34.735(6). Therefore, because appellant alleged no specific facts which would entitle her to relief, the district court did not abuse its discretion in denying this claim.

Ineffective assistance of counsel

Next, appellant claimed that she received ineffective assistance of 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 her 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.

First, appellant claimed that counsel was ineffective for failing to apprise her of each of the elements of burglary. Appellant failed to

demonstrate that counsel was deficient or that she was prejudiced. As explained above, appellant acknowledged in the plea agreement that she had discussed the elements of the crimes charged with counsel. In addition, the district court minutes of appellant's plea canvass indicate that even if counsel had not discussed the elements of burglary with appellant, the State listed the elements of each crime at the plea canvass, and appellant indicated that she understood these elements. Thus, appellant failed to demonstrate reasonable probability of a different outcome had counsel engaged in further discussion of the elements of burglary. Therefore, the district court did not err in denying this claim.

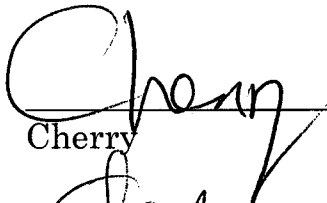
Second, appellant claimed that counsel was ineffective for failing to investigate the charges against her. Had counsel done so, appellant claimed that he would have discovered that she was the lawful possessor of the checking account upon which the disputed check was written, indicating that she was not guilty of burglary, and should not have pleaded guilty to that charge. Appellant failed to demonstrate that she was prejudiced. In support of her claim, appellant produced a copy of the will of Morgan Blossom (the owner of the checking account) which purportedly named appellant as the executor of the estate. However, appellant did not produce any evidence suggesting that the will had been probated, or that she had actually been named executor pursuant to court order, indicating that she was not legally entitled to possess the funds in the account. In addition, in the guilty plea agreement, appellant acknowledged that by pleading guilty, she admitted to all facts supporting the elements of the offenses to which she was pleading guilty. Thus, appellant failed to demonstrate any reasonable probability that she would


not have pleaded guilty had counsel performed additional investigation. Therefore, the district court did not err in denying this claim.

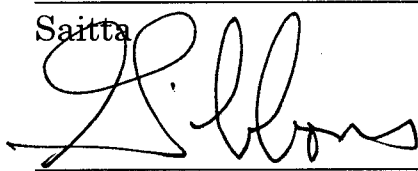
Conclusion

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

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.

cc: Hon. Andrew J. Puccinelli, District Judge
Echo Fawn Powers
Elko County District Attorney
Elko County Clerk