

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERDINANDO L. ROBINSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53806

FILED

DEC 11 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Michelle Leavitt, Judge.

On August 13, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted murder. The district court sentenced appellant to serve a term of 8 to 20 years in the Nevada State Prison. No direct appeal was taken.

On February 4, 2009, 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 May 20, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he 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 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. Hill v. Lockhart, 474 U.S. 52, 58-59 (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 v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that trial counsel was ineffective for failing: (1) to thoroughly investigate the charges, the law, and whether the victim had a motive to lie; and (2) to move to suppress circumstantial evidence. Appellant further claimed that trial counsel followed instructions from the State's attorneys without objection. Appellant failed to demonstrate that his trial counsel's performance was deficient. Appellant failed to provide any specific facts in support of these claims, and thus, we conclude that the district court did not err in denying these claims.

Second, appellant claimed that trial counsel was ineffective for failing to object to hearsay testimony. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. To the extent that appellant was referring to the testimony given at the preliminary hearing, appellant failed to provide any specific facts in support of this claim. Appellant failed to demonstrate that there was a reasonable probability that he would not have entered a guilty plea and would have insisted on going to trial in this case. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that trial counsel was ineffective for advising him to enter a guilty plea when he was innocent of the charges.

Appellant claimed that he did not commit attempted murder, and the offense only amounted to domestic violence and violation of a protective order. Appellant noted that the victim only required stitches on the chin, that no one corroborated the victim's story, and that the victim's daughter exaggerated the incident as children "tend to" do. Appellant claimed that trial counsel failed to pursue an affirmative defense.

Appellant failed to demonstrate that he was prejudiced. The victim testified at the preliminary hearing that appellant, against whom she had a protective order, hit and kicked her repeatedly, hit one of her children, carried and dragged the victim into his vehicle, and drove the victim away from her residence with indications that he would take her to the hospital. Instead, appellant drove the victim to a field and choked her, threatening her life while he was choking her. Eventually, appellant drove the victim to his house where police took him into custody. The victim described the injuries to her face, which included issues with the nerve endings and her vision. Appellant was originally charged with first-degree kidnapping, battery with substantial bodily harm, attempted murder, violation of an extended protective order, and child abuse and neglect, and the evidence presented at the preliminary hearing supported these charges. Appellant received a substantial benefit by entry of his guilty plea as he avoided going to trial on the original charges. Appellant did not identify the affirmative defense, and notably, in pleading guilty appellant affirmatively acknowledged that he had discussed potential defenses with trial counsel. Thus, appellant failed to demonstrate that there was a reasonable probability that he would have insisted on going to trial in this case. Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel failed to discuss the offense and the sentence. Appellant appeared to claim that trial counsel should not have allowed him to plead guilty when the sentence was not guaranteed. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The written guilty plea agreement informed appellant about the potential sentences and the elements of the offenses. Appellant was further informed that sentencing decisions were left to the discretion of the district court. Given the substantial benefit he received by pleading guilty, appellant failed to demonstrate that there was a reasonable probability that he would have insisted on going to trial in this case. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed his trial counsel was ineffective for advising him how to answer the district court's questions during the plea canvass. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant failed to demonstrate that trial counsel's advice regarding the answers was incorrect or inaccurate. Further, as discussed earlier, given the substantial benefit appellant received by entry of his guilty plea, appellant failed to demonstrate that he would have insisted on going to trial in this case. Therefore, we conclude that the district court did not err in denying this claim.

Sixth, appellant claimed that trial counsel was ineffective for coercing his guilty plea. Appellant claimed that trial counsel coerced his guilty plea by threatening him with habitual criminal adjudication if he took the matter to trial. Appellant failed to demonstrate that he was

prejudiced. In entering his guilty plea, appellant acknowledged that the guilty plea was not the product of threats or coercion. Even assuming that trial counsel provided erroneous advice regarding habitual criminal adjudicated, appellant received a substantial benefit by entry of his guilty plea as he avoided the original charges, which included first-degree kidnapping and the possibility of a life sentence. Therefore, we conclude that the district court did not err in denying this claim.

Seventh, appellant claimed that this trial counsel informed him that the attempted murder charge would be dropped pursuant to the plea offer. Appellant failed to demonstrate that he was prejudiced. There is no support for this claim in the record. Appellant entered a guilty plea to the charge of attempted murder. As discussed earlier, appellant received a substantial benefit by entry of his guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that he was not informed of the right to a direct appeal. Appellant's claim is not supported by the record on appeal. Appellant was informed of the limited right to an appeal in the written guilty plea agreement. Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999). Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant challenged the validity of his guilty plea. 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

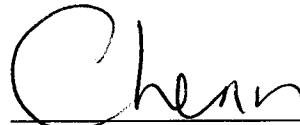
675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.


Appellant claimed that his guilty plea was not entered knowingly and voluntarily because he was upset, distraught, and disoriented on the day of the plea canvass. Appellant claimed that he could barely remember going to court. Appellant failed to carry his burden of demonstrating that his plea was not entered knowingly and voluntarily. The record does not support any allegation of incompetency regarding entry of the guilty plea; appellant failed to demonstrate that he did not have the sufficient present ability to consult with his lawyer at the time he entered his plea and that he did not have a rational and factual understanding of the proceedings. Melchor-Gloria v. State, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983); see also Dusky v. United States, 362 U.S. 402 (1960). Appellant answered all questions during the plea canvass appropriately and engaged in a dialogue with the district court. Therefore, we conclude that the district court did not err in denying this claim.


Finally, appellant claimed that the police report contained creative writing and loaded-language. Appellant complained of the use of the words "kill" and "reasonable person." This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Therefore, 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.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Ferdinando L. Robinson Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk