

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANE DONOVAN BROOKS A/K/A
CHRIS WRIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54924

FILED

NOV 08 2010

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 a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Abbi Silver, Judge.

In his petition filed on May 27, 2009, appellant claimed that his 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.

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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 plea was invalid because he was intoxicated and on mind altering drugs at the time of the plea. Appellant also claimed that the plea was invalid because he was incompetent. Appellant failed to demonstrate that his plea was invalid. Appellant answered all of the district court's questions appropriately, and the guilty plea canvass and sentencing transcripts do not provide any support that appellant was not able to understand the nature of the criminal charges, understand the nature and purpose of the proceedings, or aid and assist counsel. NRS 178.400. Further, appellant was found competent three months before entering his plea and failed to demonstrate that he became incompetent during that period of time. Therefore, the district court did not err in denying this claim.

Appellant also claimed that trial counsel "tricked" him into pleading guilty by promising that he would receive at most two sentences of two to ten years in prison. Appellant failed to demonstrate that his plea was invalid. Appellant's guilty plea agreement informed him of the minimum and maximum sentences available and that the district court alone would determine the sentence and whether those sentences would run concurrently or consecutively. Further, appellant acknowledged in the plea agreement that no one promised or guaranteed him a particular sentence. At the change of plea hearing, appellant informed the district court that he had read the plea agreement and understood it. Based on the totality of the circumstances, we conclude that the district court did not err in denying this claim.

Next, appellant raised three claims of ineffective assistance of trial counsel. To prove 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). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that trial counsel was ineffective for failing to tell him to stay seated when his case was called for preliminary hearing which allowed the witnesses to identify him.² Appellant failed to demonstrate a reasonable probability of a different outcome had he not stood when his case was called. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to provide him all of the discovery prior to pleading guilty. Appellant failed to demonstrate that he was prejudiced. Appellant received a substantial benefit by entering a guilty plea. Appellant originally faced a twenty-eight count indictment including eight counts of

²Appellant also claimed that the district court erred when it denied his motions to withdraw counsel. This claim also fell outside the scope of claims permissible in a habeas corpus petition based upon a guilty plea. NRS 34.810(1)(a).

robbery with the use of a deadly weapon. Appellant ultimately pleaded guilty to five counts of robbery with the use of a deadly weapon and the remaining twenty-three counts were dropped. Further, trial counsel testified that he provided appellant with all of the discovery except for the videotapes, which appellant would not be allowed to have while incarcerated. Therefore, appellant failed to demonstrate that there was a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had trial counsel provided all of the discovery. Accordingly, the district court did not err in denying this claim.

Finally, appellant claimed that trial counsel was ineffective for failing to file an appeal on his behalf when appellant requested him to do so. At the evidentiary hearing, appellant testified that he requested his trial counsel file an appeal and that counsel refused because appellant received a good deal. Trial counsel testified that he did not recall appellant asking him to file an appeal, that he would have noted the request in the file had there been a request, and that there were no non-frivolous issues that would have been successful on direct appeal. The district court found trial counsel to be credible, and we conclude that the district court's findings were based upon substantial evidence and were not clearly wrong. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Therefore, the district court did not err in denying this claim. See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003); Thomas v. State, 115 Nev. 148, 151, 979 P.2d 222, 224 (1999); Davis v. State, 115

Nev. 17, 20, 974 P.2d 658, 660 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

J. Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Abbi Silver, District Judge
Eighth District Court Clerk
Shane Donovan Brooks aka Chris Wright
Attorney General/Carson City
Clark County District Attorney
Maureen Schorn, Court Reporter

³The court reporter's motion for extension of time to prepare transcripts is denied as moot. The clerk of this court shall file the notice regarding transcripts that was received on September 8, 2010.