IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOWARD HUDSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 55068
ROBERT HOWARD HUDSON, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 55531

ORDER OF AFFIRMANCE IN DOCKET NO. 55068 WITH DIRECTIONS TO CORRECT CLERICAL ERROR AND ORDER ADMINISTRATIVELY CLOSING APPEAL IN DOCKET NO. 55531

These are proper person appeals 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; Stefany Miley, Judge.

Docket No. 55068

In his petition filed on June 8, 2009, appellant claimed that he received ineffective assistance of trial counsel. To show that trial counsel

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[1]Docket No. 55068 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 Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

was ineffective, appellant 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 was a reasonable probability of a different result in the proceedings. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984). To show prejudice to invalidate the decision to enter a guilty plea, appellant must demonstrate that he 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, 466 U.S. at 697.

First, appellant claimed that his trial counsel failed to investigate his claim of innocence. Appellant failed to set forth any fact in support of this claim, and thus, appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for advising him to enter a guilty plea despite his claim of innocence and for using fear of a life sentence as a scare tactic. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. As stated above, appellant failed to provide any facts in support of his claim of innocence. Appellant received a substantial benefit by entry of his guilty plea to one count of attempted sexual assault and one count of attempted lewdness with a minor under the age 14 years in that he avoided going to trial on 22 counts of lewdness with a child under the age of 14 years and 52 counts of sexual assault on a minor

under the age of 14 years. Candid advice about the potential outcome at trial is not deficient. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for failing to inform him of the right to a direct appeal. The written guilty plea agreement, which appellant acknowledged reading, signing and understanding, informed appellant of the limited right to a direct appeal. See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999). Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to challenge the fact that in the order revoking probation and amending the judgment of conviction the district court added the language "on a child under the age of 14 years" to the charge of attempted sexual assault. The district court did not err in denying this claim because appellant failed to demonstrate a reasonable probability of a different outcome in the probation revocation proceedings. Nevertheless, the attempted sexual assault count set forth in the guilty plea agreement, the plea canvass, the sentencing hearing, and the original judgment of conviction did not include mention of the victim's age. Thus, it was a clerical error to include this language, and we direct the district court to correct the clerical error in the order revoking probation and amending the judgment of conviction by deleting the language "on a child under the age of 14 years" for the attempted sexual assault count. NRS 176.565.

Fifth, appellant claimed that his trial counsel was ineffective in advising him to discuss the plea offer with a court bailiff. Appellant failed to demonstrate that he was prejudiced. In light of the substantial benefit he received by entry of his guilty plea, appellant failed to

demonstrate by a reasonable probability that he would not have entered a guilty plea and would have insisted on going to trial. Therefore, 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). 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.

First, appellant claimed that his plea was invalid because he was rushed into the decision to enter a guilty plea, he was not personally canvassed about the constitutional rights waived, and he was not personally canvassed about the potential sentences. Appellant failed to carry his burden. Appellant acknowledged at the plea canvass that his plea was freely and voluntarily entered and that he had read, discussed with counsel and understood the plea agreement. The plea agreement specifically informed appellant about the constitutional rights waived and the potential sentences available. Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his plea was invalid because he was not adequately informed about the conditions of and consequences for violating lifetime supervision. Appellant failed to carry his burden in this regard. Appellant was informed in the written plea agreement and during the plea canvass that he was subject to lifetime supervision. The specific conditions will not be known until the commencement of the term of

lifetime supervision. NRS 213.1243; Palmer v. State, 118 Nev. 823, 827, 59 P.3d 1192, 1194-95 (2002). Therefore, the district court did not err in denying this claim.

Docket No. 55531

Appellant filed a duplicate notice of appeal from the order denying his post-conviction petition for a writ of habeas corpus. Upon receipt of the duplicate notice of appeal, the clerk of this court inadvertently docketed the second notice of appeal as a new matter in Docket No. 55531. We direct the clerk of this court to administratively close the appeal in Docket No. 55531. Accordingly, we

ORDER the judgment of the district court AFFIRMED in Docket No. 55068 with directions to correct a clerical error in the order revoking probation and amending the judgment of conviction and ADMINISTRATIVELY CLOSE THE APPEAL in Docket No. 55531.[2]

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

[2]To the extent that appellant challenged the denial of his motion to appoint counsel, we conclude that the district court did not abuse its discretion in denying the motion.

cc: Hon. Stefany Miley, District Judge
Robert Howard Hudson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk