

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK SAWYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55108

FILED

JUL 15 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 motion to withdraw guilty plea.¹ Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In his motion, filed on October 16, 2009, appellant claimed that his trial counsel's ineffective assistance rendered his guilty plea invalid. To prove a claim of ineffective assistance of trial counsel where a judgment of conviction was based on a guilty plea, an appellant must demonstrate (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in that there is a reasonable probability that, but for counsel's errors, appellant 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

¹This appeal has been submitted for decision without oral argument, NRAP 34(0)(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).

inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984). A guilty plea is presumptively valid, and appellant 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.

Appellant first claimed that counsel verbally and physically threatened him. Appellant failed to demonstrate deficiency or prejudice as he failed to provide any factual support for his bare, naked claim of threats, and there was no support for it in the record. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). We therefore conclude the district court did not err in denying his motion on this ground.

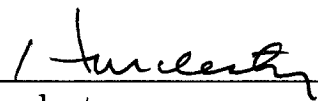
Appellant next claimed that counsel spent most of their time together convincing appellant that the State had a strong case such that appellant should not go to trial and that counsel failed to adequately prepare for trial. Appellant failed to demonstrate deficiency or prejudice. Candid advice about the possible outcome of trial is not evidence of a deficient performance. Further, appellant acknowledged in his guilty plea agreement and/or during his plea canvass that he had discussed defenses with counsel, he was satisfied with counsel's performance, he was entering his guilty plea freely and voluntarily, and doing so was in his best interest. Moreover, appellant failed to state how additional trial preparation would have changed his decision. Accordingly, appellant failed to demonstrate a reasonable probability that, but for counsel's actions, he would not have pleaded guilty but would have insisted on going to trial. We therefore

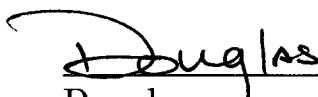
conclude the district court did not err in denying his motion on these grounds.

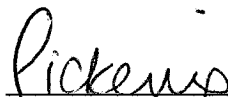
Finally, appellant claimed that counsel tried to drive a wedge between appellant and his girlfriend and guaranteed appellant that he would receive a bail reduction and house arrest while awaiting sentencing. Appellant failed to demonstrate prejudice. Appellant did not explain how any alleged attempt by counsel to interfere in his relationship affected his decision to plead. As a motion to withdraw guilty plea may only raise issues relating to the validity of the plea, Hart v. State, 116 Nev. 558, 564, 1 P.3d 969, 973 (2000), we conclude the district court did not err in denying his motion on these grounds.

As appellant has failed to prove that counsel was ineffective, he failed to demonstrate manifest injustice such as to permit his guilty plea to be set aside. See NRS 176.165. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Kathy A. Hardcastle, District Judge
Roderick Sawyer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk