IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL GONZALEZ GARCIA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35103

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.

The district court convicted appellant, pursuant to a guilty plea, of one count of lewdness with a child under the age of fourteen and sentenced appellant to serve sixteen (16) to forty-eight (48) months in prison. Appellant filed a notice of appeal. This court dismissed the appeal after appellant filed a motion to withdraw the appeal voluntarily. See Garcia v. State, Docket No. 34064 (Order Dismissing Appeal, July 14, 1999).

Appellant then filed a timely post-conviction petition for a writ of habeas corpus in the district court. The district court denied the petition without conducting an evidentiary hearing. This appeal followed.

Appellant contends that the district court erred in rejecting his claim that the guilty plea was not knowingly and voluntarily entered. Specifically, appellant contends that he is innocent, that his attorney coerced him into pleading guilty, and that he did not understand that he could go to trial. We conclude that appellant's claim lacks merit.

A guilty plea is presumptively valid, and the defendant must establish that it was not. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a guilty plea. See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

In the written plea agreement and during the oral plea canvass, appellant admitted that he was guilty of the charged

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offense. Appellant also stated that no one had threatened, forced or coerced him to plead guilty. Moreover, appellant was fully informed in writing and orally of his right to a speedy and public trial and that he was giving up that right by pleading guilty. The record therefore belies appellant's claims regarding the knowing and voluntary nature of his plea. Accordingly, we conclude that the district court did not err in rejecting appellant's claim that his guilty plea was not knowingly and voluntarily entered.[1]

Appellant also contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, appellant claims that counsel provided ineffective assistance by failing to interview witnesses, conduct pretrial discovery, file pretrial motions, meaningfully confer with appellant about the case, argue on appellant's behalf on the presentence motion to withdraw the plea, and present evidence or witnesses at the sentencing hearing. We conclude that appellant's claims lack merit.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, an appellant must demonstrate that counsel's performance fell below an objective standard of reasonableness. Further, an appellant must demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial. See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Hill v. Lockhart, 474 U.S. 52 (1985). The court need not consider both prongs of the Strickland test if the defendant fails to make a showing on

[1]Appellant also contends that the district court abused its discretion in denying appellant's presentence motion to withdraw the guilty plea. The denial of a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings. Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984). We conclude that appellant waived this issue by failing to pursue it on direct appeal. Moreover, we note that the issues raised in the presentence motion are largely the same as those raised in the post-conviction petition and addressed in this decision.

either prong. Strickland v. Washington, 466 U.S. 668, 697 (1984).

Appellant has presented nothing more than bare or naked claims for relief that are not supported by specific factual allegations. Appellant fails to identify the witnesses that counsel failed to interview, the pretrial discovery that counsel failed to conduct, the particular pretrial motions that counsel should have filed, or the witnesses and evidence that counsel should have presented at sentencing. Appellant also fails to explain what information would have been discovered had counsel conducted additional interviews or discovery. Similarly, appellant fails to explain how additional communication with his attorney would have effected the outcome. Moreover, the record indicates that to the extent there was a difficult relationship between appellant and counsel, it was the result of appellant's unwillingness to cooperate with counsel at certain times. Finally, appellant has failed to demonstrate that he was prejudiced by counsel's failure to argue the motion to withdraw. We therefore conclude that appellant has failed to meet either prong of the Strickland test with respect to all of his ineffective assistance claims. Accordingly, the district court did not err in rejecting appellant's claims.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General
Clark County District Attorney
Amesbury & Schutt
Clark County Clerk