IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN JOSHUA CARMONA, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 56463
JONATHAN JOSHUA CARMONA, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 56464

FILED

JAN 13 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Docket No. 56463 is a proper person appeal from an order of the district court denying appellant's February 4, 2010, post-conviction petition for a writ of habeas corpus. Docket No. 56464 is a proper person appeal from an order of the district court denying appellant's June 30, 2010, motion for withdrawal of plea.[1] Second Judicial District Court, Washoe County; Robert H. Perry, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b).

Appellant's petition and motion each raised several claims of ineffective assistance of trial counsel as grounds to invalidate his guilty

[1]These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefings are unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

plea. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) 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).

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First, appellant claimed that counsel was ineffective for not advising him that he could be sentenced to more than the State's recommended minimum sentence for each count and for promising him that sentences for some counts would be run concurrent. Appellant failed to demonstrate prejudice. Appellant's claim is in part belied by the record as the State did not agree to a recommended minimum sentence but rather to a recommended maximum sentence for each count. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Further, the State fulfilled its agreement and appellant was not sentenced to more than the State's recommended maximum sentence for each count. Moreover, appellant acknowledged in his guilty plea memorandum and during his plea canvass that he understood the potential sentences he could receive, that they could run concurrent or consecutive, that the sentence was up to the discretion of the district court, and that no one had made him any other promises in exchange for his plea. As the totality of the circumstances demonstrates that appellant's plea was entered into knowingly, voluntarily and intelligently, appellant failed to demonstrate a

reasonable probability that, but for any promises counsel may have made, he would not have pleaded guilty but would have insisted on going to trial. See generally State v. Langarica, 107 Nev. 932, 822 P.2d 1110 (1991). We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to provide him with his confession or communicate with him outside the courtroom setting. Appellant failed to demonstrate deficiency or prejudice. Appellant failed to specify what he was unable to communicate with counsel or why he needed a copy of his confession. Further, he failed to demonstrate that, had he had a copy of his confession or spoken with counsel in another setting, there was a reasonable probability that he would not have pleaded guilty but would have insisted on going to trial. We therefore conclude that the district court did not err in denying these claims.

Third, appellant claimed that counsel was ineffective for failing to disclose that the Department of Parole and Probation would make sentencing recommendations. Appellant failed to demonstrate deficiency. He failed to state any facts that would render any such omission objectively unreasonable. We therefore conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that counsel was ineffective at sentencing for postponing his first hearing in order to avoid appellant being sentenced by Judge Flanagan and for failing to present mitigation evidence. Appellant failed to demonstrate deficiency or prejudice. Appellant's claims were belied by the record, which reflects that counsel requested the continuance so that a psychological evaluation could be

completed and that such an evaluation was ultimately completed and submitted in mitigation.[2] See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. Appellant also failed to specify what additional mitigation evidence counsel should have presented or how it would have affected his sentence. See id. Further, appellant failed to demonstrate that he would have received a different sentence from a different judge. We therefore conclude that the district court did not err in denying these claims.

Finally, appellant claimed that counsel was ineffective for failing to advise him of his right to appeal. Appellant failed to demonstrate prejudice, as counsel pursued a timely appeal. See Carmona v. State, Docket No. 51701 (Order of Affirmance, February 26, 2009). We therefore conclude that the district court did not err in denying this claim.

Appellant also claimed that his sentence was excessive and disproportionate to the crimes committed. This claim was outside the scope of claims permissible in a post-conviction petition for writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a). Moreover, as a separate and independent ground to deny relief, appellant's claim was decided on the merits on direct appeal[3] and was thus barred by the doctrine of law of the case. Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

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[2]Appellant offered no explanation for his belief that Judge Flanagan would sentence him. The record indicates that Judge Flanagan neither took appellant's guilty plea nor presided at either of his scheduled sentencing hearings.

[3]Carmona v. State, Docket No. 51701 (Order of Affirmance, February 26, 2009).

Appellant claimed that trial counsel's ineffective assistance resulted in manifest injustice such that appellant's conviction should be set aside and he should be allowed to withdraw his guilty plea. See NRS 176.165. A guilty plea is presumptively valid, and appellant carried 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); 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 counsel was ineffective in failing to investigate witnesses or to retain an expert defense witness. Appellant failed to support these claims with specific facts that, if true, would have entitled him to relief. See Hargrove, 100 Nev. at 502, 686 P.2d at 225. Accordingly, appellant failed to carry his burden.

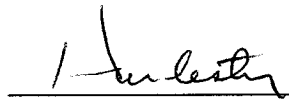
Second, appellant claimed that, during his guilty plea canvass, he merely parroted what counsel had told him to say, thereby invalidating his plea. Having already recognized that appellant entered into his plea with full knowledge of the sentence possibilities, we decline to grant the requested relief, as doing so "would be reducing the guilty plea canvas[s] to a mere 'pro forma routine colloquy.'" Langarica, 107 Nev. at 934, 822 P.2d at 1112 (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

Finally, appellant again raised claims that counsel was ineffective in not securing a specific sentencing judge, in ignoring appellant's requests for a direct appeal, in presenting insufficient mitigation evidence at sentencing and in avoiding communicating with appellant. These claims were also raised in his petition and, as discussed

above, appellant failed to demonstrate deficiency and prejudice. Accordingly, we conclude that the district court did not err in denying his motion, and we

ORDER the judgments of the district court AFFIRMED.[4]

_____, J.
Saitta



_____, J.
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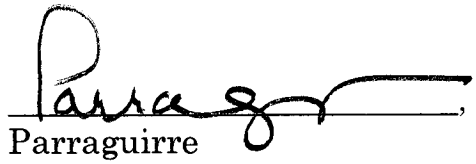

_____, J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Jonathan Joshua Carmona
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[4]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.