

IN THE SUPREME COURT OF THE STATE OF NEVADA

CODY C. LEAVITT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57195

FILED

MAR 07 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Cody Leavitt's post-conviction petition for a writ of habeas corpus and motion to withdraw his guilty plea. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

First, Leavitt contends that the district court abused its discretion by denying his post-conviction motion to withdraw his guilty plea. He specifically claims that his plea was not knowingly entered because he was not informed of the restitution amount, the plea canvass was inadequate because he had no recollection of the offenses he was accused of committing, and the State failed to prove the charged offense.

The district court may grant a post-conviction motion to withdraw a guilty plea where necessary "[t]o correct manifest injustice." NRS 176.165. In determining whether a manifest injustice has occurred, the court should consider whether the defendant acted voluntarily, understood the nature of the charges against him, and understood the consequences of his plea. See Wilson v. State, 99 Nev. 362, 372-73, 664 P.2d 328, 334-35 (1983). "On appeal from the district court's determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's

determination absent a clear showing of an abuse of discretion.” Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

The record reveals that Leavitt was originally charged with first-degree kidnapping, battery with the use of a deadly weapon, sexual assault on a minor under the age of 14, two counts of lewdness on a minor under the age of 14, and battery with the intent to commit sexual assault. Leavitt pleaded guilty to a fictitious charge of child abuse and neglect with substantial bodily harm; was appropriately canvassed by the district court; and acknowledged that he read and understood the written plea agreement, the DNA evidence indicated that he had sexual contact with the 13-year-old victim, and he believed that he was guilty of committing a sexual offense upon the victim. The written plea agreement expressly informed Leavitt that he may be ordered to pay restitution. Based on this record, we conclude that Leavitt has not demonstrated the existence of manifest injustice or shown that the district court clearly abused its discretion by denying his motion to withdraw his guilty plea.

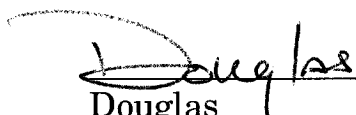
Second, Leavitt contends that the district court abused its discretion by denying him a full and fair evidentiary hearing on all of the claims raised in his post-conviction petition for a writ of habeas corpus. Leavitt claims that the district court’s arbitrary decision to limit his evidentiary hearing to claims of ineffective assistance of counsel violated the Fourteenth Amendment’s due process and equal protection clauses because “other similarly situated defendants receive evidentiary hearings on all of their meritorious claims.” Leavitt argues that he should have been allowed to present evidence that the State withheld evidence, failed to prove the factual basis for the guilty plea beyond a reasonable doubt,


and failed to use adequate methodologies and testing procedures for analyzing the DNA samples.

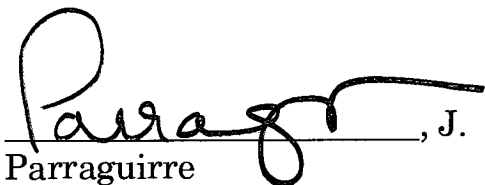
Leavitt has not demonstrated that the district court's decision to admit or exclude evidence during the evidentiary hearing was manifestly wrong, see Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999), or that the district court violated the U.S. Constitution by limiting the scope of the evidentiary hearing to issues permissible under NRS 34.810(1)(a), see State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003) (the application of the statutory procedural default rules to post-conviction habeas petitions is mandatory). Further, the record reveals that the State provided an adequate factual basis for the guilty plea, see State v. Gomes, 112 Nev. 1473, 1480-81, 930 P.2d 701, 706 (1996); see also Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (evidentiary hearings are not required when the claims are belied by the record), and Leavitt had ample opportunity during the evidentiary hearing to question defense counsel regarding decisions he made based on the State's DNA evidence. Accordingly, we conclude that this contention is without merit.

Having considered Leavitt's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
The Kice Law Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk