

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DUGAIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57801

FILED

OCT 05 2011

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 post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition filed on March 23, 2007, and his amended petition filed on April 16, 2009, appellant claimed that he received ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner 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 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

¹This appeal 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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that counsel was ineffective for failing to investigate the surveillance tape and the inconsistent statements provided by the victims in this case. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. At the evidentiary hearing, counsel testified that he viewed the surveillance tape at the preliminary hearing and determined that it would not be helpful. Further, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated these issues. Appellant was originally charged with conspiracy to commit robbery, burglary while in possession of a firearm, attempted murder with the use of a deadly weapon, and three counts of robbery with the use of a deadly weapon. Appellant received a substantial benefit by pleading guilty because he ultimately pleaded guilty to one count of robbery with the use of a deadly weapon and one count of attempted murder with the use of a deadly weapon. Further, appellant failed to demonstrate that the surveillance video or the inconsistent statements by the victims would have negated any of the crimes that appellant was charged with. Therefore, the district court did not err in denying these claims.

Next, appellant claimed that counsel was ineffective for failing to explain that his sentence would be enhanced pursuant to the deadly

weapon enhancement.² Appellant failed to demonstrate that counsel was deficient. Appellant was informed in the plea agreement that his sentence for each of the charges would be enhanced by an equal and consecutive term for the deadly weapons enhancement. Appellant stated at the change of plea hearing that he and his counsel had discussed the plea agreement thoroughly, that he understood the plea agreement, and that he had no questions regarding the plea agreement. Therefore, the district court did not err in denying these claims.

Finally, appellant claimed that his plea was invalid because he was not informed of the deadly weapon enhancement prior to pleading guilty and because counsel failed to investigate the surveillance video. Appellant failed to demonstrate his plea was invalid. 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). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. Hubbard, 110 Nev. at 675, 877


²The Honorable Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.


To the extent that appellant claimed that the district court erred in sentencing him to the deadly weapons enhancement because the enhancement was not determined by the jury, this claim was outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

P.2d at 521. 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.

As stated above, appellant was informed of the deadly weapon enhancement prior to pleading guilty. Further, as stated above, appellant received a substantial benefit by pleading guilty and he failed to demonstrate how the failure to investigate the surveillance video affected his decision to plead guilty. Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, Sr. J.
Rose


_____, Sr. J.
Shearing

cc: Hon. Michelle Leavitt, District Judge
Michael Dugais
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk