

IN THE SUPREME COURT OF THE STATE OF NEVADA

REYNALDO TED JASSO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57904

FILED

SEP 15 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; Jerome T. Tao, Judge.

In his petition filed on October 25, 2010, appellant claimed that his guilty plea was invalid because he was not informed of all of the potential penalties.² Appellant claimed that since the guilty plea agreement alleged that the crime took place between January 1, 2000, and September 30, 2004, and probation was a potential penalty between January 1, 2000, and July 1, 2003, appellant should have been informed

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).

²Appellant also claimed that his plea was invalid because there was no presentence investigation report mentioned at sentencing and he did not receive a psychosexual evaluation prior to sentencing to determine whether he was eligible for probation. Because these issues arose after the plea was entered, they could not have affected the validity of the plea.

he could receive probation.³ 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). 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 failed to demonstrate that the plea was invalid. While the plea agreement could have been more clear regarding the potential penalties, or could have narrowed the time period the crime was committed, based on the totality of the circumstances, the plea was valid. Appellant was originally charged with forty-two counts. In exchange for a stipulated sentence of life in prison with the possibility of parole after ten years, the State agreed to only pursue one count of lewdness with a minor under the age of fourteen and dismiss the remaining forty-one counts. Because appellant stipulated to a specific sentence, appellant failed to demonstrate that knowing that probation was a potential penalty would have influenced his decision to plead guilty. Therefore, the district court did not err in denying this claim.

³Between the years of 2000 and 2003, the possible penalty for lewdness with a minor under the age of fourteen was either life in prison with the possibility of parole in ten years or probation. 1999 Nev. Stat., ch. 105, § 49, at 471-72; 1997 Nev. Stat., ch. 641, § 19, at 3190. In 2003, the legislature revised the possible penalties by eliminating probation as a sentencing option and adding a term of two to twenty years. 2003 Nev. Stat., ch. 461, § 2, at 2826.

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

First, appellant claimed trial counsel was ineffective because he should not have advised appellant to stipulate to a sentence of ten to life because appellant did not have any prior convictions for sexual offenses, he could have received as little as five to twenty years in prison had he gone to trial, and trial counsel should have conducted a psychosexual evaluation prior to advising him to plead. Appellant failed to demonstrate that he was prejudiced. Appellant received a tremendous benefit by entry of his guilty plea as he avoided forty-one additional counts in this case. Appellant informed the district court that he had read the guilty plea agreement in its entirety and acknowledged understanding the terms of the plea agreement. Further, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty had trial counsel obtained a psychosexual evaluation of appellant. Therefore, the district court did not err in denying this claim.

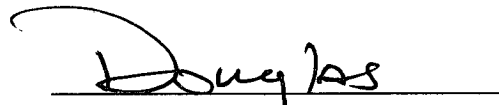
Next, appellant claimed that trial counsel was ineffective for advising him to plead guilty because trial counsel failed to file any motions

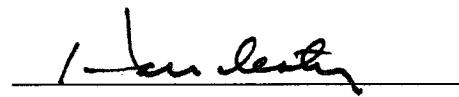
and failed to do any investigation. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant failed to allege what motions trial counsel should have filed, therefore, he failed to allege specific facts that, if true, entitled him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Further, given the tremendous benefit appellant received by pleading guilty, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty had trial counsel further investigated the charges. Therefore, the district court did not err in denying these claims.

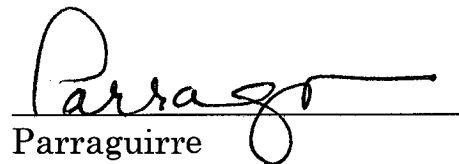
Next, appellant claimed that he received ineffective assistance of trial counsel because trial counsel should have objected at sentencing that a presentence investigation report was not done and because appellant did not receive a psychosexual evaluation. Further, appellant claimed that he received ineffective assistance of appellate counsel because appellate counsel should have raised these issues on appeal. Appellant's first claim is belied by the record as a presentence investigation report was completed. Hargrove, 100 Nev. at 503, 686 P.2d at 225. As to his second claim, appellant failed to demonstrate that trial or appellate counsel's performances were deficient. Because appellant agreed to a stipulated sentence of life in prison with the possibility of parole after ten years, it was not necessary to order a psychological evaluation. See NRS 176.139(1) (stating that a psychological evaluation shall be arranged when a defendant is convicted of a sexual offense and the suspension of the sentence or the granting of probation is permitted). Therefore, an objection would have been futile, Donovan v. State, 94 Nev. 671, 671, 584 P.2d 708, 711 (1978), and the issue did not have a reasonable probability of success on appeal. Kirksey, 112 Nev. at 998, 923

P.2d at 1114. Thus, the district court did not err in denying these claims,
and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Jerome T. Tao, District Judge
Reynaldo Ted Jasso
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk