

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO JAVIER SERRATO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58077

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; David B. Barker, Judge.

In his petition filed on December 15, 2010, appellant claimed that his plea was invalid.² 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

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).

²To the extent that appellant raised any claims independently from his claims that his plea was invalid or that he received ineffective assistance of counsel, those claims were not cognizable in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

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 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. Appellant failed to demonstrate that his plea was invalid.

First, appellant claimed that he was coerced by counsel into pleading guilty. This was a bare and naked claim that was not supported by specific facts, that if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore the district court did not err in denying this claim.

Second, appellant claimed that he was informed by the justice court at the waiver of preliminary hearing that he would receive a sentence of only four months, that the district court failed to inform him of the nature of the charges and the maximum penalties at the change of plea hearing, and that the guilty plea agreement was never signed. These claims were belied by the record. The justice court never informed appellant that he would receive a sentence of only four months, the district court and the plea agreement informed appellant of the nature of the charges and the maximum penalties, and the guilty plea agreement was signed. Therefore, the district court did not err in denying these claims.

Finally, appellant claimed that there were "too many contradictions" in the case. In support of these "contradictions," appellant

reargued several of the same claims above and also argued that his confession was involuntary based on Miranda v. Arizona, 384 U.S. 436 (1966), that the district court knew this and should not have accepted the plea, and that he did not want to plead guilty but insisted on going to trial. Appellant failed to demonstrate that his confession was involuntary, and therefore, failed to demonstrate that the voluntariness of his plea was affected. Further, appellant's claim that he did not want to plead guilty is belied by the record. He signed the plea agreement, was properly and personally canvassed by the district court, and answered affirmatively that he wanted to plead guilty. Therefore, the district court did not err in denying this claim.

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 that counsel was ineffective for failing to advise him regarding a venue defense. Appellant claims that counsel should have informed him that venue was a possible defense because his confession was involuntary, there was no DNA evidence, the testimony of

the victim was flawed, the victim's medical exam did not support the victim's claims, and other unspecified problems with the State's case. Appellant failed to demonstrate that counsel was deficient because these alleged errors do not implicate a venue defense. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to advise appellant of the consequences of the plea, the elements of the offenses, or any potential defenses. This claim is belied by the record. At the change of plea hearing, appellant told the district court that he discussed the plea agreement with counsel, that he understood the plea agreement, and that he did not have any questions regarding the terms and the negotiations. The plea agreement explained the consequences of the plea and the elements of the offenses. Further, the plea agreement stated that appellant discussed all potential penalties with counsel. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to prepare for trial and for coercing appellant into pleading guilty. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Appellant agreed to plead guilty prior to the preliminary hearing, which severely limited the amount of time for investigation. Further, he failed to allege what further evidence would have been discovered had counsel continued to prepare for trial, and therefore, he failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. As to appellant's claim that counsel coerced him into pleading guilty, appellant failed to allege specific facts that, if true, entitled him to relief. Hargrove, 100 Nev.

at 502, 686 P.2d at 225. Thus, the district court did not err in denying these claims.

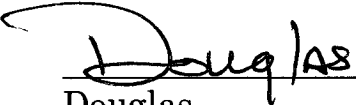
Fourth, appellant claimed that counsel was ineffective for failing to initiate plea negotiations. This claim is without merit. Counsel engaged in plea negotiations and appellant ultimately entered a guilty plea. Therefore, the district court did not err in denying this claim.

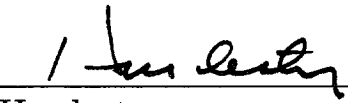
Fifth, appellant claimed that counsel was ineffective for failing to inform appellant of the right to appeal. Appellant failed to demonstrate that counsel was deficient. There is no constitutional requirement that counsel must inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists "a direct appeal claim that has a reasonable likelihood of success." Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000); Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999). Appellant did not allege that he inquired about an appeal nor does it appear that there existed a direct appeal claim that had a reasonable likelihood of success. Further, the written guilty plea agreement informed appellant of his limited right to appeal. Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999). Therefore, the district court did not err in denying this claim.

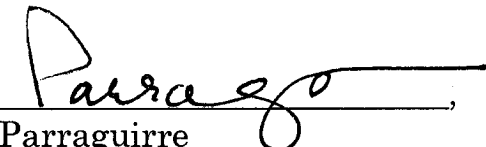
Finally, appellant claimed that counsel was ineffective for failing to inform appellant that she did not investigate the victim's medical records, failing to interview the victim, failing to advise appellant regarding a mental illness defense, failing to inform appellant regarding current laws governing guilty pleas, and failing to inform appellant about the current law so that appellant could make a conscious choice to plead

guilty. These were bare and naked claims lacking specific facts that, if true, would entitle appellant to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Francisco Javier Serrato
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk