

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant/Cross-Respondent,
vs.
LEE DAVIDSON,
Respondent/Cross-Appellant.

No. 58144

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Angell*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from an order of the district court granting appellant Lee Davidson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appeal

The State contends that the district court erred in granting Davidson's petition on the ground that his guilty plea was not entered knowingly and voluntarily because the district court delegated responsibility for canvassing Davidson about habitual criminal sentencing to the State. The State asserts that the district court improperly concluded that the court which accepted Davidson's plea failed to conduct an adequate canvass. It also contends that other evidence demonstrates under the totality of the circumstances that Davidson's plea is valid. We agree.

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.

Davidson acknowledged in the plea agreement that he had not been promised any particular sentence and that the sentencing judge had the discretion to order multiple sentences served concurrently or consecutively. The plea agreement also informed him of the penalties he faced for each charge as well as the penalties for habitual criminal adjudication. While the State may have not explained that he could be sentenced to consecutive habitual sentences during the plea canvass, nothing the State said negated the language that Davidson acknowledged in the plea agreement. Moreover, where a defendant pleads guilty to multiple counts, “the possibility that the sentences may be imposed consecutively is implicitly understood and is not a consequence that must be explained to the defendant.” Rosemond v. State, 104 Nev. 286, 287, 756 P.2d 1180, 1181 (1988). Therefore, we conclude that the district court erred in granting relief on the claim that his plea was not entered knowingly.

Cross-Appeal

Davidson contends that the district court erred in denying his claim that trial counsel was ineffective for advising him to plead guilty to the indictment as charged without any negotiations. 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984). We conclude that this argument lacks merit. Davidson failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Davidson did not allege any error by counsel that affected his decision to enter his guilty plea, and thus he failed to show that but for that error, he would not have pleaded guilty. The fact that he was unhappy with the sentence he received did not render his counsel ineffective for advising him to enter a guilty plea. See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (holding that a defendant's hope of leniency or mere subjective belief as to potential sentence is insufficient to invalidate his decision to enter guilty plea). Therefore, we conclude that the district court did not err in denying this claim.

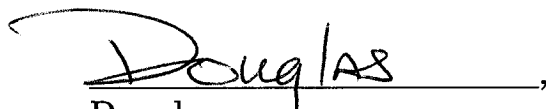
Second, Davidson argues that the district court erred in denying his claims of ineffective assistance of appellate counsel. We conclude that this contention lacks merit. Davidson's terse argument does not identify what arguments his counsel failed to raise on appeal or how the district court erred in evaluating his claims. Accordingly, he did not establish that the district court erred in concluding that he failed to demonstrate that appellate counsel was deficient or that prejudice resulted.

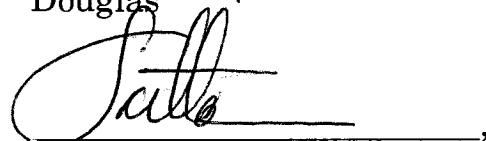
Third, Davidson argues that the district court erred in dismissing his claims as not properly brought in a post-conviction petition challenging a guilty plea. He asserts that the claims contain assertions of ineffective assistance of counsel. We agree. Although titled as claims of trial error, Davidson's contentions contained claims of ineffective assistance of counsel. The district court erred in failing to recognize and address these claim. See U.S. v. Seesing, 234 F.3d 456, 462-63 (9th Cir. 2000) (requiring liberal construction of prisoners' pro se pleadings). However, a review of the claims raised reveals that Davidson is not entitled to relief. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (noting that this court will affirm the judgment of a district court if it reached the correct result for the wrong reason). Notably, Davidson did not identify which prior convictions his counsel should have challenged and what the basis of those challenges should be, identify what evidence his counsel should have introduced on his behalf at sentencing, or identify the grounds his attorney should have pursued to challenge his arrest and suppress his statement. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that petitioner not entitled to hearing on bare allegations). Davidson's claim that his plea was invalid because his counsel had incorrectly informed him of the possible sentence he faced is belied by the record. See id. at 502-03, 686 P.2d at 225. In addition, as NRS 207.010 makes no special allowance for nonviolent or remote convictions, he failed to demonstrate that his counsel was ineffective for the failure to make such an argument. See Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

Having considered appellant's and cross-appellant's contentions, and concluded that relief is warranted for the reasons set forth herein, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Linda Marie Bell, District Judge
Attorney General/Carson City
Clark County District Attorney
Matthew Carling, Esq.
Lee Davidson
Eighth District Court Clerk

¹Because cross-appellant is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents cross-appellant has submitted to this court in this matter.