

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD CLIFFORD MCINTYRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58864

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingabou
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of counsel raised in his August 9, 2010, petition, without first conducting an evidentiary hearing. 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). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, appellant claims that the district court erred in denying his claim that trial counsel was ineffective for failing to investigate. Appellant failed to demonstrate that trial counsel was deficient or that he was prejudiced. He failed to provide specific facts that, if true, would entitle him to relief. Mere speculation as to what the investigation may have produced is not sufficient. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

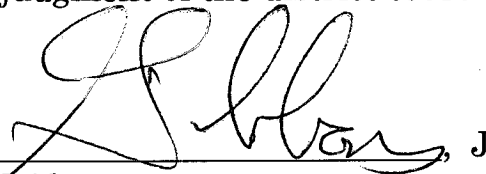
Second, appellant claims that the district court erred in denying his claim that trial counsel was ineffective for failing to inform appellant that his intoxication at the time of the crime may have negated his specific intent to commit burglary. Appellant fails to demonstrate that he was prejudiced because he fails to demonstrate that there was a reasonable probability of a different outcome had trial counsel informed him about specific intent. Negating the specific intent to commit burglary would have been nearly impossible because appellant entered the building by prying open the door with a pry bar, cut the alarm and phone systems, and smashed slot machines to get money. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

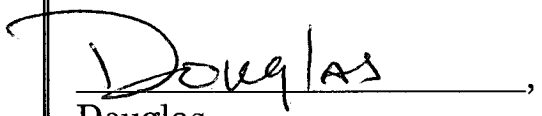
Next, appellant claims that the district court erred in denying his claim that his plea was involuntary. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 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 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 claims that his plea was involuntary because he was on anti-psychotic medications at the time he entered his plea, which made him unable to concentrate and feel as though he was in "a tunnel." He also claimed that his plea was involuntary because the district court failed to ask appellant whether he was under the influence of any medication at the change of plea hearing. Appellant failed to demonstrate that his plea was involuntary. Appellant did not claim that he did not understand the plea or the proceedings, just that he felt like he was in "a tunnel." Further, appellant answered all questions asked by the district court appropriately. Because appellant fails to demonstrate that the medications caused his plea to be invalid, he failed to demonstrate that the district court's failure to ask him about medications rendered his plea invalid. Therefore, the district court did not err in denying this claim without an evidentiary hearing.

Finally, appellant claims that cumulative error warrants reversal. Because appellant failed to demonstrate any error, he necessarily failed to demonstrate there was cumulative error. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Janet J. Berry, District Judge
Sally S. deSoto
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk