

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK ARTHUR FOX, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58923

**FILED**

NOV 17 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.<sup>1</sup> Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

In his petition filed on March 25, 2011, appellant claimed that his guilty plea was not knowingly and voluntarily entered.<sup>2</sup> A guilty plea

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<sup>1</sup>This 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).

<sup>2</sup>The district court determined that only claim 5 was cognizable 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). The district court correctly concluded that claims 1, 2 and 4 were not cognizable. However, while the title of claim 3 suggested the claim was not cognizable, several of the sub-claims raised therein were cognizable. The district court addressed the substance of the sub-claims raised in claim 3 either in its discussion of claim 5 or in the alternative grounds for denying relief. The district court correctly concluded that appellant's claims that the prosecutor committed misconduct and was not "effective" were not cognizable.

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.

First, appellant claimed that he did not receive adequate advice regarding the potential sentences and that his trial counsel told him that he would receive a sentence of two to five years. Appellant failed to carry his burden in demonstrating that his plea was invalid. In entering his plea, appellant stipulated to receiving a sentence of four to ten years for mid-level trafficking. Appellant was informed in the written guilty plea agreement and the plea canvass of the potential penalties he faced by entry of his guilty plea. Appellant's mere subjective belief regarding sentencing was insufficient to invalidate his decision to enter a guilty plea. Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Therefore, we conclude that the district court did not err in denying these claims.

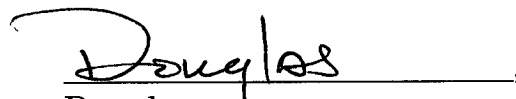
Second, appellant claimed that his plea was coerced because it was part of a plea package. Appellant failed to carry his burden in demonstrating that his plea was invalid. In entering his guilty plea, appellant acknowledged that his plea was not the product of threats, coercion or promises of leniency. The fact that the plea was the result of a

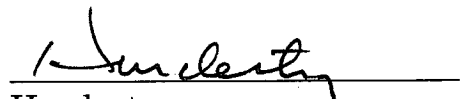
plea package did not cause the plea to be involuntary. Therefore, we conclude that the district court did not err in denying this claim.

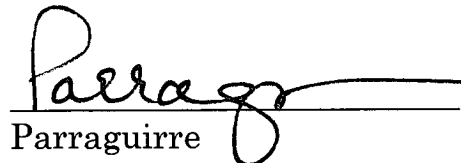
Third, appellant appeared to claim that the plea was invalid because there was an insufficient factual basis for the plea. Appellant failed to carry his burden in demonstrating that his plea was invalid. During the plea canvass, appellant acknowledged the factual basis for the guilty plea. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his trial counsel failed to inform him of the right to a direct appeal. Appellant failed to demonstrate that trial counsel had a duty to advise him about an appeal in the instant case because he failed to demonstrate the existence of a direct appeal claim that would have had a reasonable likelihood of success. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Janet J. Berry, District Judge  
Patrick Arthur Fox, Jr.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk