

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD LEE ALLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59884

**FILED**

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. Malone*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

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> Eighth Judicial District Court, Clark County; James A. Brennan, Senior Judge.

In his petition filed on September 16, 2011, appellant first claimed that his guilty plea was invalid. 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

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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).

Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

Appellant claimed that he was rushed into pleading guilty and was not of “sound mind or body” when he entered the plea. We conclude that appellant failed to demonstrate that his plea was invalid. At the plea canvass, appellant stated that no one had threatened or forced him to plead guilty, he had read and understood the entire plea agreement, and his counsel answered all of his questions regarding the plea agreement. While the plea canvass shows that there was an issue as to whether appellant was receiving adequate medical care for his hand injury, there is no indication in the record that appellant suffered from a mental illness that would impair his ability to understand the legal proceedings before him. See NRS 178.400; see also Godinez v. Moran, 509 U.S. 389, 396-97 (1993); Dusky v. U.S., 362 U.S. 402, 402 (1960). Accordingly, we conclude that the district court did not err in determining that his guilty plea was knowingly and voluntarily entered.

Next, appellant claimed that he received ineffective assistance of trial 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 trial counsel failed to adequately challenge the improper continuances of his preliminary hearings, which resulted in the denial of his right to a speedy trial. Appellant failed to show that he was prejudiced. Any illegality in his detention as a result of an improper continuance became moot upon a finding of probable cause and subsequent bind-over to the district court. See Sheriff v. Myles, 99 Nev. 817, 818-19, 672 P.2d 639, 639 (1983) (“[W]hile a writ of habeas corpus would be available during a period of illegal detention it will not issue once the detention becomes legal.” (quotation omitted)). Furthermore, appellant did not demonstrate how the delay affected his decision to plead guilty. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that trial counsel failed to challenge the sufficiency of the evidence presented at the preliminary hearing on the charge of obtaining and using the personal identification of another. Appellant failed to demonstrate that his counsel’s performance was deficient or that he was prejudiced. Trial counsel did in fact challenge the evidence as to this charge, both at the preliminary hearing and through a pretrial habeas petition, and appellant failed to explain what more counsel should have done. Further, appellant failed to demonstrate that the State did not meet its burden of establishing probable cause to bind him over for trial. See Sheriff v. Middleton, 112 Nev. 956, 961, 921 P.2d 282, 286 (1996) (stating that at a preliminary hearing the State need only present marginal or slight evidence to establish probable cause that a crime occurred and the defendant is the person who committed the crime). Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that trial counsel failed to challenge the validity of a search warrant on the basis that the warrant was not physically left with him or placed in his prison records. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. He did not allege that he was not provided with the search warrant or that the warrant lacked probable cause. Accordingly, he failed to show that a motion to suppress would have been successful, and counsel cannot be deemed ineffective for failing to file a futile motion. See Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Thus, the district court did not err in denying this claim.

Fourth, appellant claimed that trial counsel was ineffective for failing to obtain a DNA expert. Appellant failed to set forth specific facts in support of this claim, and thus, he failed to demonstrate that counsel's performance was deficient or that he was prejudiced. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that trial counsel failed to make sure that he "was cared for properly physically, mentally," presented the plea agreement to him when he was in "physical pain and mental duress," and waived defects in his plea. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant did not demonstrate that he was unable to understand the proceedings or the consequences of his plea. See NRS 178.400; see also Godinez, 509 U.S. at 396-97; Dusky, 362 U.S. at 402. He affirmatively acknowledged during the plea canvass that he had read and understood the written guilty plea agreement, and he denied being coerced into entering a guilty plea. In light of the record, appellant failed to demonstrate that, but for counsel's

errors, he would not have pleaded guilty but would have insisted on going to trial. Therefore, we conclude that the district court did not err in denying these claims.


Sixth, appellant claimed that trial counsel failed to file an appeal despite being requested to do so. We conclude that the district court erred in denying the petition without conducting an evidentiary hearing on the appeal-deprivation claim because appellant's claim, which was not belied by the record, would have entitled him to relief if true. Hargrove, 100 Nev. at 502-03, 686 P.2d at 225; see also Toston v. State, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 800-01 (2011). Therefore, we reverse the district court's denial of this claim and remand for an evidentiary hearing on the claim.<sup>2</sup>


Appellant also claimed that (1) the prosecutor committed misconduct with regard to the preliminary hearings, (2) the justice court violated his rights to due process and a speedy trial by postponing his preliminary hearings, (3) he should have received additional presentence credits for time served, and (4) there were errors in the presentence investigation report. These claims fall outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a). Therefore, we conclude that the district court did not err by rejecting these claims. Accordingly, we

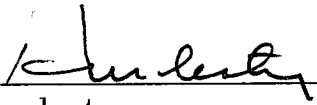
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<sup>2</sup>If the district court determines that appellant was deprived of a direct appeal, the district court should provide the remedy set forth in NRAP 4(c).

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.<sup>3</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

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

cc: Chief Judge, Eighth Judicial District Court  
Hon. James A. Brennan, Senior Judge  
Ronald Lee Allen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.