

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENYON HAIR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60259

FILED

OCT 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Kenyon Hair's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge. Hair raises two issues on appeal.

First, Hair argues that the district court erred by denying his claim that his attorney was ineffective for failing to ensure that Hair understood the nature of the charges and consequences of the plea in light of his diminished mental capacity. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Here, the district court conducted an evidentiary hearing during which both Hair and defense counsel testified. The district court found that counsel took multiple steps and precautionary measures to


ensure that Hair understood the terms of the agreement. The district court also determined that Hair failed to demonstrate prejudice because the evidence in the case weighed heavily against him and he received a significantly lighter sentence than he would have received if convicted at trial. The district court determined that Hair failed to demonstrate that his counsel was deficient or that there was a reasonable probability that, but for the alleged errors of counsel, Hair would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). We conclude that the district court's findings are supported by substantial evidence and are not clearly wrong, and Hair has failed to demonstrate that the district court erred as a matter of law.

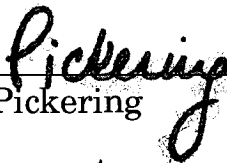
Second, Hair contends that the district court abused its discretion by finding that his guilty plea was valid despite his mental health issues. Specifically, Hair contends that the district court did not consider the effect of Hair's medications or the fluctuations of his mental capacity. Defense counsel testified that while Hair was incarcerated his cognitive abilities seemed to improve. The district court conducted a thorough plea canvass. And, upon review of the record, the district court found no evidence that Hair's guilty plea was not knowingly, voluntarily and intelligently entered. The record on appeal supports the district court's finding and we conclude that the district court did not abuse its discretion in this regard. See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) ("Absent an abuse of discretion, the district court's decision regarding the validity of a guilty plea will not be reversed on

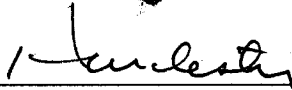
appeal.”); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of proving that his plea is invalid).

Having considered Hair’s contentions and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

cc: Hon. Linda Marie Bell, District Judge
Lizzie R. Hatcher
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk