

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61782

FILED

JUL 2 2 2013

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Johnny Miller's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Miller contends that the district court erred and abused its discretion by denying his claims that his guilty plea was not knowing and voluntary because counsel was ineffective and failed to explain key terms in the guilty plea agreement, he was not personally canvassed regarding the sentencing consequences of his plea, and he did not read the written guilty plea agreement. "This court will not invalidate a plea so long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). 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). We review a district court's determination of whether a plea was knowing and voluntary for an abuse of discretion, *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008), and review claims of ineffective assistance of counsel de novo, giving deference to a district court's factual findings, *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court conducted a limited evidentiary hearing on these claims and found credible counsel's testimony that she explained the guilty plea agreement to Miller, including what it meant to have the enhancement for the assistance of a child run consecutively to the grand larceny count.¹ The written guilty plea agreement stated that the enhancement would run consecutively and Miller acknowledged at the plea canvass that he read and signed the guilty plea agreement, reviewed the agreement with counsel, and understood his rights and responsibilities under the agreement. The record thus supports the district court's conclusions that counsel was not ineffective and that the totality of the circumstances indicated that the plea was knowing and voluntary. We conclude that the district court did not err or abuse its discretion.

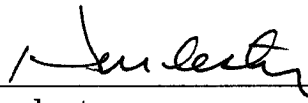
Miller also contends that the district court erred by denying his claim that counsel was ineffective for failing to speak with witnesses who would have stated that Miller entered the store to purchase a product

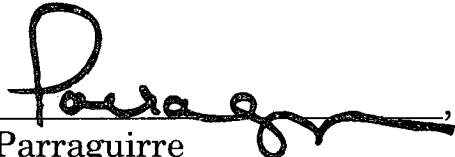
¹The Hon. J. Charles Thompson, Senior Judge, conducted the evidentiary hearing and pronounced oral decision denying Miller's petition.

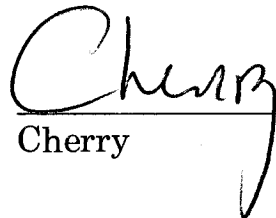
and did purchase a product once in the store. The district court denied this claim because Miller failed to demonstrate a reasonable probability that had counsel spoken to the witnesses he would have insisted on going to trial rather than pleading guilty. We conclude that the district court did not err by denying this claim and by doing so without conducting an evidentiary hearing regarding it. *See Kirksey*, 112 Nev. at 988, 923 P.2d at 1107; *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Having considered Miller's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Cherry

cc: Hon. J. Charles Thompson, Senior Judge
Hon. Kathleen E. Delaney, District Judge
Benjamin C. Durham
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk