IN THE SUPREME COURT OF THE STATE OF NEVADA

DEON CAGLE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35686

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court granting respondent's motion to dismiss appellant's post-conviction petition for a writ of habeas corpus.

Appellant was originally convicted, pursuant to a guilty plea, of one count of solicitation of prostitution after testing positive for exposure to HIV. In exchange for her plea, the State agreed not to object to the sentence running concurrently to a sentence that appellant was already serving. The district court sentenced appellant to 48 to 120 months in prison, to run concurrently with the sentence appellant was already serving.

In her petition below, appellant argued that trial counsel was ineffective. Specifically, appellant argued that her guilty plea was induced by trial counsel's representation that the State would not argue for a sentence of more than two to five years, and that trial counsel was ineffective because trial counsel advised appellant to enter a guilty plea.

There is absolutely no evidence, beyond appellant's bald assertion, that there was ever an agreement whereby the State would recommend no more than two to five years in prison. The guilty plea memorandum is silent on this point. More importantly, when appellant was canvassed at the entry of

the plea, she stated that she understood that the maximum sentence possible was two to ten years, that the district court alone would decide the sentence, and that she was pleading guilty freely and voluntarily, without threats or promises of any kind. Appellant also stated, under oath, that she did, in fact, commit the acts charged in the information.

Appellant's argument that she relied on the representations of counsel in entering her plea is therefore belied by the record. See State v. Langarica, 107 Nev. 932, 934-35, 822 P.2d 1110, 1112 (1991) (where appellant informs the court at the entry of the plea that he is aware of the sentence possibilities, and that he may receive maximum penalty, guilty plea is knowing and voluntary, despite defense counsel's mistaken beliefs about the district court's ability to impose a sentence less than the statutory minimum).

As to appellant's argument that counsel was ineffective for advising appellant to plead guilty, appellant argues that if not for trial counsel's promise that the State would recommend less than the maximum sentence, she would have insisted on going to trial. As previously discussed, appellant's claim of reliance on trial counsel's representation regarding sentencing is belied by the record.

In sum, we conclude that the district court did not err by granting the motion to dismiss without conducting an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (petitioner is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record).

Additionally, appellant argues that this appeal should be remanded for an evidentiary hearing because the order of the district court does not meet the requirements of NRS 34.830(1) and NRAP 4(b)(2), which require that an order in

a post-conviction matter must contain specific findings of fact and conclusions of law supporting the decision of the court. The order in this case does not contain findings of fact and conclusions of law, but the order grants the State's motion to dismiss, and states that the Court had "read and considered the memoranda submitted in support of and in opposition to [appellant's] petition." The findings and conclusions can be inferred from the pleadings filed below, and the district court's order is therefore subject to meaningful appellate review. Although the better approach would have been to enter specific findings and conclusions, we decline to remand this appeal on this ground.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER this appeal dismissed.[1]

Young, J.

Agosti, J.

Leavitt, J.

cc: Hon. Brent T. Adams, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

[1]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.