IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON MCKAY GLOVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35725

FILED

OCT 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On June 27, 1995, the district court convicted appellant, pursuant to a guilty plea, of two counts of sexual assault of a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of life in prison with the possibility of parole. Appellant appealed from the judgment of conviction, arguing that the district court abused its discretion at sentencing. This court dismissed the appeal. See Glover v. State, Docket No. 27373 (Order Dismissing Appeal, January 2, 1998).

On January 26, 1999, appellant filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent appellant in the proceedings, conducted an evidentiary hearing and denied the petition. This timely appeal followed.

Appellant contends that the district court erred in rejecting his claim that his guilty plea was not knowingly and voluntarily entered. In particular, appellant contends that his guilty plea was involuntary because he misunderstood that the offense carried a mandatory minimum sentence and was not informed that probation was not available. We conclude that appellant's contention lacks merit and that the district court did not err.

To determine if a plea is valid, this court considers the entire record and the totality of the facts and

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circumstances of a case. See Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986). A guilty plea is presumptively valid, and the defendant must establish that it was not. Id. at 272, 721 P.2d at 368. Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a plea. See Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

When appellant entered into the plea agreement in this case, NRS 174.035(1) provided that the district court could not accept a guilty plea "without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea."[1] 1991 Nev. Stat., ch. 405, § 1, at 1062. Moreover, we have stated that "[w]hether or not probation is available is critical to the defendant's understanding of the consequences of his guilty plea" and, therefore, "the district judge has a duty to insure that the record discloses that the defendant is aware of that fact." Meyer v. State, 95 Nev. 885, 887, 603 P.2d 1066, 1067 (1979).

The written guilty plea agreement in this case states that as a consequence of the guilty plea, appellant "may be imprisoned for a period of life in the Nevada State Prison with eligibility for parole beginning when a minimum of ten years has been served" and that appellant is "not eligible for probation." This information appears twice in the plea agreement. During the plea canvass, the prosecutor informed appellant that he was facing a "mandatory/minimum sentence of life in the Nevada State Prison, with a mandatory prison term of not less than 10 years before you are eligible for probation." The prosecutor repeated this information with respect to the second charge. On both

[1]The Legislature amended this provision in 1995 to remove the requirement of an oral plea canvass where the plea agreement is in writing. See 1995 Nev. Stat., ch. 480, § 2, at 1534. The amended provision does not apply to plea agreements entered into prior to July 1, 1995. See 1995 Nev. Stat., ch. 480, § 6, at 1536.

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occasions, appellant indicated that he understood the possible sentence.

At the evidentiary hearing on the post-conviction petition, appellant testified that trial counsel, public defender John Morrow, told him that the judge would show him a little leniency if he pleaded guilty and that the judge had discretion to sentence him to the mandatory term or probation. Appellant further testified that Morrow said that with good time credits, appellant might get out in two or three years. Appellant also testified that Morrow never told him that the offenses were nonprobationable. Finally, he testified that he never read the guilty plea memorandum.

In contrast to appellant's testimony, Morrow testified that he never told appellant that he would only go to prison for two to three years. Morrow also testified that it was his practice to inform a client of the possible sentences. Morrow further testified that there was no way he would have told appellant that he might get probation.

The district court found that appellant's testimony was not believable and that appellant was fully informed regarding the possible sentences and that probation was not available. Appellant has not demonstrated that the district court's credibility determination is clearly wrong. See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("On matter of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion."). Moreover, the guilty plea memorandum, transcript of the plea canvass and Morrow's testimony at the evidentiary hearing support the district court's conclusion that appellant was aware of the possible sentences and the unavailability of probation at the time he entered his plea. We therefore conclude that the district court did not err in rejecting appellant's claim that he did not knowingly and voluntarily plead guilty. Accordingly, we affirm the district

court's order denying appellant's post-conviction petition for a writ of habeas corpus.[2]

It is so ORDERED.

Young, J.

Maupin, J.

Becker, J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

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

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