

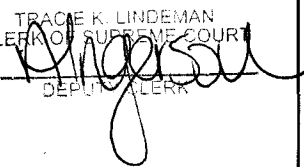
IN THE SUPREME COURT OF THE STATE OF NEVADA

DEREK BRANDON CHRISTENSEN,
Appellant,
vs.
JAMES BENEDETTI, WARDEN,
Respondent.

No. 62422

FILED

JAN 16 2014

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus and motion to withdraw his guilty plea. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On appeal from the denial of his March 30, 2010, petition, appellant argues that the district court erred in denying his claim that his plea was not knowingly and intelligently entered because he was unaware that he was ineligible for probation. Appellant fails to carry his burden of establishing that his 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). At the evidentiary hearing, appellant's counsel testified that he explained to appellant on multiple occasions prior to appellant's plea that appellant would not be eligible for probation.

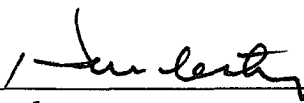
In addition, appellant was informed in the guilty plea agreement, which appellant signed and acknowledged having read, that he was not eligible for probation. Counsel explained at the evidentiary hearing that there was a first draft of the guilty plea agreement which




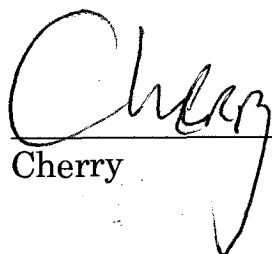
14-01689

contained incorrect information regarding probation eligibility, but that he did not recall ever showing the incorrect one to appellant and there is no record in his file of his office sending it to appellant. Counsel testified that the error was corrected in a second draft and the corrected written agreement was shown to appellant prior to the plea. Appellant signed the corrected written agreement and counsel testified that when they reviewed the corrected written agreement, he again explained to appellant that appellant was not eligible for probation. The district court concluded that the totality of the circumstances demonstrated that appellant knew he would not be eligible for probation. Substantial evidence supports that decision. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Little v. Warden*, 117 Nev. 845, 849-51, 34 P.3d 540, 542-44 (2001). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹

, J.
Hardesty

, J.
Douglas

, J.
Cherry

¹The answering brief submitted by the State does not comply with NRAP 32(a)(4) because the text is not double spaced. Counsel for the State is cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. See NRAP 28.2(b).

cc: Hon. Patrick Flanagan, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk