

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNELL PATRICK PUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63227

FILED

DEC 17 2013

FRANCIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on December 13, 2012, appellant claimed that his guilty plea was invalid because (a) the district court breached the plea agreement by sentencing him to a term of life with the possibility of parole after 10 years for the murder count and by ordering the attempted murder count to run consecutively, and (b) at the time of the plea, he was in a state of delirium, was threatened with the habitual criminal statutes and was basically illiterate. We conclude that appellant failed to demonstrate that his plea was invalid. The district court did not agree to impose a specific sentence when it accepted the guilty plea. While appellant claimed that his counsel, purporting to speak on behalf of the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

district court and the State, advised him that the plea agreement was for a sentence of 10 to 25 years on the murder count and for the attempted murder count to run concurrently, this deal was not memorialized in the plea agreement or mentioned at the plea canvass. Rather, appellant acknowledged in the plea agreement and at the plea canvass that he understood the possible sentences the district court could impose, that no one had promised him a particular sentence, that his plea was made voluntarily and not under duress or coercion, and that he read and understood the entire plea agreement. There is nothing in the record to demonstrate that appellant was not competent to enter his guilty plea. *See Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (citing *Dusky v. United States*, 362 U.S. 402 (1960)). Under these circumstances, we conclude that the district court did not err in finding that appellant understood the possible sentencing range prior to entering his plea and that he entered his plea knowingly, voluntarily, and intelligently. *See Hudson v. Warden*, 117 Nev. 387, 396, 22 P.3d 1154, 1160 (2001) (applying a “totality of the circumstances” test to determine whether defendant understood the consequences of the plea); *see also Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975) (holding that defendant’s mere subjective belief regarding sentencing was insufficient to invalidate his decision to enter a guilty plea). Accordingly, we conclude that the district court did not err in denying this claim.²

²To the extent appellant argued that his sentence is in violation of the Equal Protection Clause and constitutes cruel and unusual punishment, these claims should have been raised on direct appeal and fall outside the scope of claims permissible in a post-conviction habeas
continued on next page . . .

Next, appellant claimed that he received ineffective assistance of counsel. 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). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, appellant claimed that counsel was ineffective for failing to challenge the district court's breach of the plea agreement. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced because, as discussed above, there was no breach of the plea agreement, and counsel cannot be ineffective for failing to pursue futile motions or objections. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Thus, the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to argue competently at the sentencing hearing. Appellant failed to demonstrate that counsel's performance was deficient or that he was

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petition challenging a judgment of conviction based upon a guilty plea. *See* NRS 34.810(1)(a).

prejudiced. At the sentencing hearing, counsel presented a letter from appellant, informed the district court of appellant's lack of criminal history and his version of the events that warranted leniency, and argued for a favorable sentence. We therefore conclude that the district court did not err in denying this claim.

Third, appellant claimed counsel was ineffective because he had a conflict of interest. Appellant failed to demonstrate deficiency or prejudice because he failed to support this claim with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. at 502-03, 686 P.2d at 225 (holding that "bare" or "naked" claims are insufficient to grant relief). Therefore, the district court did not err in denying this claim.

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

ORDER the judgment of the district court AFFIRMED.

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Douglas W. Herndon, District Judge
Donnell Patrick Pugh
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk