

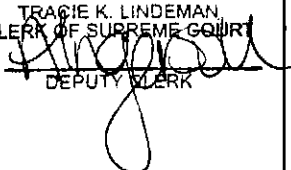
IN THE SUPREME COURT OF THE STATE OF NEVADA

DEBBY SEVANT A/K/A TRACY RUSSO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63812

FILED

FEB 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from district court order denying appellant Debby Sevant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The judgment of conviction in this case was entered on January 13, 2010. The district court clerk received Sevant's post-conviction petition for a writ of habeas corpus on January 13, 2011, but did not file it until January 17, 2011. Because the petition was filed more than one year after the entry of Sevant's judgment of conviction, the district court denied the petition as untimely based on NRS 34.726(1). The district court also determined that even if Sevant could demonstrate good cause to excuse the untimely filing of the petition, her claims lacked merit.

Sevant contends that the district court erred by concluding that her petition was not timely filed. We agree. To be timely, Sevant's petition had to be filed by January 13, 2011. See NRS 34.726(1) (requiring post-conviction petition to be filed within 1 year after entry of the judgment of conviction); *Gonzales v. State*, 118 Nev. 590, 593, 53 P.3d 901, 902 (2002) (calculating the one year time limit for the purposes of NRS

34.726). The district court determined that Sevant's petition was not timely because it was *filed* on January 17, 2011. However, it is the clerk's duty, not the parties', to *file* submitted documents. *See Sullivan v. Eighth Judicial Dist. Court*, 111 Nev. 1367, 1372, 904 P.2d 1039, 1042 (1995). Here, where it is clear that Sevant's petition was timely submitted to the clerk for filing and it was the clerk's delay in filing the petition that resulted in the petition being filed beyond the one-year time limit, it was an abuse of discretion to deny the petition as not timely filed. *See id.* at 1372, 904 P.2d at 1042 ("ambiguities regarding when documents were received or filed must ultimately be resolved in favor of the party submitting them"). Although we conclude that the district court erred in concluding that Sevant's petition as untimely, we nevertheless conclude that it did not err by denying her petition because, as demonstrated below, her claims lacked merit.

Sevant contends that the district court erred by denying her claim that her guilty plea was not knowing and voluntary. "A guilty plea is knowing and voluntary if the defendant has a full understanding of both the nature of the charges and the direct consequences arising from a plea of guilty." *Rubio v. State*, 124 Nev. 1032, 1038, 194 P.3d 1224, 1228 (2008) (internal quotation marks and emphasis omitted). In determining the validity of a guilty plea, courts look to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Pursuant to a global guilty plea agreement, Sevant agreed to plead guilty in this case and another case in exchange for the State's

agreement to pursue small habitual criminal adjudications in both cases. Sevant claimed that the district court's decision to run the sentences related to her habitual criminal adjudications consecutively "materially altered the guilty plea agreement so much so that [her] waiver was neither knowing or voluntary." The district court denied this claim because the guilty plea agreement clearly stated that the court could run her sentences consecutively or concurrently and Sevant stated during the plea canvass that she had read the agreement, discussed it with counsel, and understood its terms. We conclude that the district court did not err by denying this claim. *See Crawford v. State*, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001) ("A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.").

Sevant also contends that the district court erred by denying her claim that the imposition of consecutive sentences relating to her habitual criminal adjudications constitutes cruel and unusual punishment. The district court denied this claim because it determined that it should have been raised on direct appeal and therefore was waived pursuant to NRS 34.810(1)(a). We conclude that the district court did not err by denying this claim.

Finally, Sevant contends that the district court erred by concluding that trial counsel was not ineffective and that there was no basis to attack the certified copies of her prior convictions. Counsel for Sevant does not support these claims with any argument; instead, counsel improperly incorporates by reference the district court filings below and asserts that incorporation is necessary due to the limitations placed on him pursuant to NRAP 3C. We reject this assertion. The fast track

statement contains less than half the words permitted by the type-volume limitation and, if necessary, counsel could have requested leave to file a brief in excess of the type-volume limitations. See NRAP 3C(h)(2); NRAP 3C(e)(1)(B); NRAP 32(a)(7)(D). Because these claims were not supported by cogent argument or relevant legal authority, we decline to consider them. See *Maresca v. State*, 103 Nev. 669, 673 748 P.2d 3, 6 (1987).

Having concluded that no relief is warranted, we
ORDER the judgment of the district court AFFIRMED.

Pickering, J.
Pickering

Parraguirre
Parraguirre

Saitta, J.
Saitta

cc: Hon. Michael Villani, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk