

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS DIAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36002

FILED

JAN 18 2001

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus and appellant's motion for the appointment of counsel.

On January 22, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted intentional transmission of human immunodeficiency virus. The district court sentenced appellant to serve a term of 24 to 60 months in the Nevada State Prison. Appellant did not file a direct appeal.

On January 13, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 10, 2000, appellant filed a motion for the appointment of counsel. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 3, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant made several contentions of ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, an appellant must demonstrate that his counsel's performance fell below an objective standard of reasonableness. Further, an appellant must

demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial. See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); Hill v. Lockhart, 474 U.S. 52 (1985).

Appellant made five claims of ineffective assistance of counsel which he failed to support with any factual allegations. He claimed (1) that his counsel failed to communicate with him; (2) that his counsel failed to investigate appellant's job, life, any statements that appellant made, or anyone who could have contributed to his case; (3) that his counsel never provided any character witnesses; (4) that his counsel did not challenge a statement made by the victim at the sentencing hearing regarding appellant's unsanitary testing of his blood while the victim's child was present; and (5) that his counsel was ineffective because at sentencing he allowed a document from the Clark County Health District to influence the judge's sentencing decision. We conclude that the district court did not err in denying these claims because appellant failed to support these claims with specific factual allegations that would entitle him to the relief requested. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Next, appellant claimed that his counsel failed to provide a proper defense. Specifically, appellant claimed that his attorney failed to raise the affirmative defense that the victim knew that appellant was HIV positive before engaging in sexual activity. Appellant claimed that his attorney failed to contact any witnesses who could have demonstrated the victim's knowledge of appellant's disease. Appellant failed to demonstrate that he received ineffective assistance of counsel. See Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Appellant made factual admissions during the plea canvass. Moreover, appellant signed a guilty plea agreement which stated that he had "discussed with my attorney any possible

defenses, defense strategies and circumstances which might be in my favor."

Next, appellant claimed that his guilty plea was involuntary. Specifically, appellant claimed that his attorney coerced him to plead guilty because she implied that appellant was guilty and would lose at trial, and because she allegedly told appellant that he would receive probation.

A guilty plea is presumptively valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently. See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. See id. at 272, 721 P.2d at 368. We conclude that the district court did not err in denying this claim. During the plea canvass, appellant admitted to the facts of the crime. Furthermore, appellant confirmed that he understood the charges against him, and the negotiations. He also confirmed that he understood and signed a guilty plea agreement which informed him that sentencing was in the court's discretion. Lastly, he confirmed that his guilty plea was freely and voluntarily given. Therefore, appellant did not establish that his plea was involuntary or unknowingly entered.


Next, appellant claimed that NRS 201.205, which prohibits the intentional transmission of the human immunodeficiency virus, is unconstitutional because it singles out HIV carriers and there is no other law of this nature pertaining to carriers of other diseases. This claim falls outside of the scope of claims allowed in a post-conviction petition for a writ of habeas corpus challenging a conviction based upon a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim.


Finally, appellant claimed that he did not file a direct appeal because he was told that he could not appeal after pleading guilty. This claim is belied by the record. Appellant signed a guilty plea agreement which informed him of his limited right to appeal. Thus, we conclude that this claim is without merit. See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).


In light of the above, we conclude that the district court did not err in denying appellant's motion for appointment of counsel. See NRS 34.750.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we affirm the order of the district court.

It is so ORDERED.


_____, J.
Shearing


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Luis Diaz
Clark County Clerk