

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK KEVIN BLACKBURN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65722

FILED

OCT 15 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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; Stefany Miley, Judge.

In his petition filed on January 13, 2014, appellant claimed that his guilty plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the 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). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

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).



Appellant claimed that his plea was not knowingly or voluntarily entered because he was coerced into pleading guilty to an offense that he did not commit and he was heavily medicated at the time that he entered the plea. We conclude that appellant failed to demonstrate that his plea was invalid. At the plea canvass, appellant stated that no one threatened or forced him to plead guilty, he read and understood the entire plea agreement, and his counsel answered all of his questions regarding the plea agreement. There is no indication in the record that appellant was coerced or that he was unable to understand the legal proceedings before him. Accordingly, we conclude that the district court did not err in determining that his guilty plea was knowingly and voluntarily entered.

Next, appellant raised several claims of ineffective assistance of trial 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 trial counsel was ineffective for failing to appeal the probable-cause determination because the victim admitted at the preliminary hearing that she had lied to the police. Appellant failed to demonstrate that counsel's performance was deficient

or that he was prejudiced. There is no independent appeal available from a probable-cause determination. NRS 177.015(3); NRS 177.045. Further, sufficient evidence was presented at the preliminary hearing to support the bind-over to the district court. *See Sheriff, Washoe Cnty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (stating that probable cause to support a criminal charge may be based on slight or marginal evidence). Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that trial counsel was ineffective for failing to object to the prosecutor's and the district court's failure to certify evidence and witnesses to the jury. Appellant cited *Manson v. Brathwaite*, 432 U.S. 98 (1977), in apparent support for this proposition, but this decision does not discuss certification, and appellant provides no other factual allegations as to this claim. Appellant's bare and naked assertion did not demonstrate that counsel's performance was deficient or that he was prejudiced. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude that the district court did not err in denying this claim.

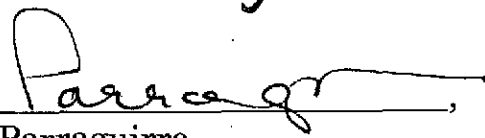
Third, appellant claimed that trial counsel was ineffective for failing to seek "a change of venue" after this court remanded to the district court to conduct an evidentiary hearing on whether the psychosexual evaluation was based on an accepted standard of assessment. Appellant failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Appellant's assertions—that counsel knew that the sentencing judge had shown prejudice but declined to have the evidentiary hearing conducted by a different judge even though the sentencing judge

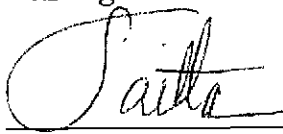
would have allowed it—are belied by the record. *See id.* Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that counsel failed to expand the record to prove his innocence and failed to investigate anything. Appellant failed to demonstrate that counsel’s performance was deficient or that he was prejudiced, as he did not allege any specific facts to support this claim. *See id.* Appellant did not explain what counsel should have investigated or how further investigation would have affected his decision to plead guilty. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Stefany Miley, District Judge
Frank Kevin Blackburn
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk