


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GREGORY LEON BANKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66962

FILED

MAY 20 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an 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; James M. Bixler, Judge.

In his petition filed on May 15, 2014, appellant Gregory Banks claimed that his 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). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. 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 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).


Banks claimed his plea was invalid because the charge he pleaded to was fictitious, he was promised probation, and he was not properly advised or canvassed regarding the defects he waived. Banks failed to demonstrate his plea was invalid. The plea agreement specifically stated he was not promised any specific sentence and clearly stated the State retained the right to argue for small habitual treatment. Further, Banks was thoroughly canvassed regarding the charge, the possible sentences, and the fact that sentencing was up to the district court. According to Banks' petition, he and counsel talked about the fictitious charge and decided to plead guilty to grand larceny in order to be eligible for probation. Because Banks understood he was pleading to a fictitious charge his claim he did not understand the defects he waived is without merit. Therefore, the district court did not err in denying this claim.

Banks also claimed counsel was ineffective for failing to file an appeal when asked to do so and when Banks expressed dissatisfaction with his plea. Banks failed to demonstrate counsel was deficient. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to demonstrate deficiency, a petitioner must demonstrate counsel's performance fell below an objective standard of reasonableness). Banks specifically waived his right to appeal his conviction in the plea agreement and he did not identify any issues that could have been raised on appeal despite this waiver. See *Cruzado v. State*, 110 Nev. 745, 747, 879 P.2d 1195, 1195 (1994) ("A waiver of the right to appeal does not prevent an appeal when the sentence imposed is not in accordance with the negotiated agreement."), *overruled on other grounds by Lee v. State*, 115 Nev. 207, 985 P.2d 164

(1999). Therefore, the district court did not err in denying this claim.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Crockett, District Judge
Gregory Leon Banks
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk