

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMIE D. COOPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36376

FILED

MAR 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
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.

On August 10, 1999, the district court convicted appellant, pursuant to a guilty plea, of driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor, third offense. The district court sentenced appellant to serve a term of twelve to thirty months in the Nevada State Prison.¹ Appellant did not file a direct appeal.

On April 24, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 July 31, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. Specifically appellant claimed that (1) his attorney told him that his prison sentence would be much shorter than the one he actually received; (2) his attorney told him that this conviction would be a misdemeanor (for a second offense) instead of a felony (for a third offense); and (3) his attorney failed to inform him of his right to appeal his conviction and sentence.

¹A person found guilty of this offense for a third time within seven years is guilty of a category B felony and, according to NRS 484.3792(1)(c), "shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years."

To state a claim of 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 fell below an objective standard of reasonableness. Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.²

Our review of the record on appeal reveals that appellant has not demonstrated a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial, were it not for counsel's errors.

First, appellant has not shown that he was misinformed about the length of the sentence he would receive. The sentence he received was the same one he agreed to in his guilty plea memorandum. Thus, this claim is belied by the record.³ Moreover, a defendant's mere subjective belief regarding his potential sentence will not itself serve to invalidate a guilty plea as involuntary or unknowing.⁴

Second, appellant has not shown that he was misinformed that this conviction was his third offense in seven years, not his second offense. This claim is also belied by the guilty plea memorandum appellant signed.⁵ Appellant argued further in his petition that his attorney erred by not objecting to the State's introduction of judgments of convictions for appellant's prior offenses within the prior seven years. Because appellant did not challenge the validity of the prior convictions, we conclude that the district court was entitled to rely upon the judgments of prior convictions as facially valid. Moreover, counsel did not err by not objecting, because there was

²See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

³See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁴See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

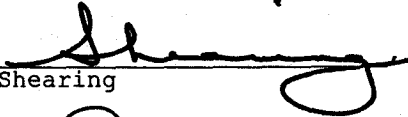
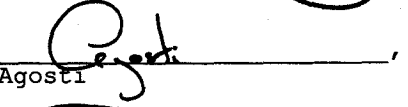
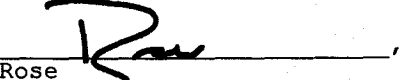
⁵See Hargrove, 100 Nev. 498, 686 P.2d 222.

no evidence that the prior convictions were constitutionally infirm.⁶

Third, appellant has not shown that his attorney erred by not informing him of his right to a direct appeal. Appellant's guilty plea memorandum set forth the limited circumstances under which appellant would be entitled to appeal his conviction and sentence; that is, if his appeal were "based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035."⁷ Moreover, there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal.⁸

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.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.

Agosti J.

Rose J.

⁶See *Dressler v. State*, 107 Nev. 686, 819 P.2d 1288 (1991) (holding that evidence of a prior conviction for enhancement purposes shall be admitted so long as the record of that conviction does not, on its face, raise a presumption of constitutional infirmity. If there is no such facial evidence of constitutional infirmity, the defendant must establish by a preponderance of the evidence that the prior conviction is constitutionally infirm.)

⁷See *Davis v. State*, 115 Nev. 17, 974 P.2d 658 (1999) (stating that this language in a guilty plea agreement informs defendant of right to appeal).

⁸See *Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

⁹See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General
Clark County District Attorney
Jimmie D. Cooper
Clark County Clerk