

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. FERGUSON,

No. 36682

Appellant,


vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On September 23, 1999, the district court convicted appellant William E. Ferguson, pursuant to a guilty plea, of burglary and sentenced him to serve sixteen to seventy-two months in prison. Ferguson did not appeal from the judgment of conviction.

On May 30, 2000, Ferguson 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 Ferguson or to conduct an evidentiary hearing. On August 2, 2000, the district court denied the petition. This appeal followed.

In his petition, Ferguson alleged that his guilty plea was not voluntarily entered and was, instead, the result of coercion and duress. In particular, he alleged that he pleaded guilty under duress because he was denied his right to a speedy trial, his counsel and the district attorney threatened him with a twenty-year sentence if he went to trial, and his continuous confinement over a seven-month period of time caused him to be physically, mentally, and emotionally broken such that he agreed to plead guilty. We conclude that this claim lacks merit and that the district court did not err in rejecting it.

The defendant has the burden of showing that his guilty plea was not entered knowingly and voluntarily.¹ To determine if a plea is

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

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valid, the court must consider the entire record and the totality of the facts and circumstances of a case.² On appeal from a district court decision regarding the validity of a guilty plea, this court "will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."³

The record in this case demonstrates that Ferguson knowingly and voluntarily pleaded guilty. During the plea canvass, the district court inquired as to whether Ferguson was pleading guilty freely and voluntarily. Ferguson responded in the affirmative and indicated that he was pleading guilty because he felt it was in his best interest. There is nothing to support Ferguson's attempt to repudiate the representations that he made in open court that his plea was voluntary.⁴ Moreover, it appears that Ferguson's counsel simply provided him with accurate information as to the penalties he faced if he were to be convicted at trial on the original charges (burglary and grand larceny) and the district court were to adjudicate him a habitual criminal. That information does not amount to coercion or duress sufficient to invalidate the guilty plea.⁵ Finally, we note that Ferguson was incarcerated for several months prior to his guilty plea because he was facing charges in at least one other case and had been on an own recognizance or a bail release in that case when he committed the offenses charged in this case. His pretrial detention was not unusual or sufficient to give rise to a claim of coercion or duress, particularly given his affirmative representations during the plea canvass that he was entering his plea freely and voluntarily. Given the totality of the circumstances, we conclude that the district court did not abuse its discretion in finding that Ferguson voluntarily pleaded guilty.

²Id. at 271, 721 P.2d at 367; see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).

³Bryant, 102 Nev. at 272, 721 P.2d at 368.

⁴See Lundy v. Warden, 89 Nev. 419, 514 P.2d 212 (1973).

⁵See Schmidt v. State, 94 Nev. 665, 667, 584 P.2d 695, 696 (1978) ("[A] defendant's desire to plead guilty to an original charge in order to avoid the threat of the habitual criminal statute will not give rise to a claim of coercion.").

In his petition, Ferguson also claimed that NRS 205.060 erroneously defines burglary by eliminating the common law element of "breaking," that the State failed to present evidence of specific intent in this case, and that charges for burglary and grand larceny violate the Double Jeopardy Clause. These claims fall outside of the limited scope of a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction pursuant to a guilty plea.⁶ Moreover, the constitutional challenge to the burglary statute and the double jeopardy claim could have been raised on direct appeal and were waived by Ferguson's failure to so raise them.⁷ Those claims also lack merit.⁸ Additionally, Ferguson's guilty plea relieved the State of its obligation to prove every element of the offense beyond a reasonable doubt.⁹ Furthermore, Ferguson admitted during the plea canvass that he entered the Stratosphere with the intent to commit a larceny therein. For these reasons, we conclude that the district court did not err in rejecting Ferguson's challenges to the burglary statute, the sufficiency of the evidence, and the constitutionality of charging a defendant with burglary and grand larceny arising out of the same incident.¹⁰

⁶See NRS 34.810(1)(a).

⁷Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁸See State v. Adams, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978) (holding that "authority to enter a building open to the public extends only to those who enter with a purpose consistent with the reason the building is open"); McNeeley v. State, 81 Nev. 663, 666-67, 409 P.2d 135, 136 (1965) (recognized that "breaking" is not an element of burglary in Nevada and was eliminated from the offense in 1876); Sheriff v. Stevens, 97 Nev. 316, 317-18, 630 P.2d 256, 257 (1981) (holding that burglary and grand larceny are separate offenses and defendant may be charged with both).

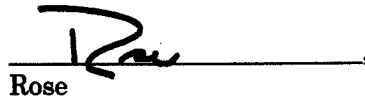
⁹See Bounds v. Warden, 91 Nev. 428, 429, 537 P.2d 475, 476 (1975).

¹⁰We note that the district court also rejected Ferguson's petition on the ground that the claims therein were not supported by citation to authority. Because the form petition set forth in NRS 34.735, and used by Ferguson, specifically provides that the petitioner need not provide citation of authorities, we expressly disapprove of that portion of the district court's order.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Ferguson is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹²

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
William E. Ferguson
Clark County Clerk

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.