

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY SCOTT STEVENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74317-COA

FILED

DEC 04 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY S. Young  
DEPUTY CLERK

JEFFREY SCOTT STEVENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74318-COA

*ORDER OF AFFIRMANCE*

Jeffrey Scott Stevens appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed in district court case numbers PC8298 and PC 8340 on March 28, 2017. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Stevens claims the district court erred by denying his claims his plea was not knowingly and voluntarily entered.<sup>1</sup> After conviction, a district court may permit a petitioner to withdraw a guilty plea where necessary “to correct a manifest injustice.” NRS 176.165. 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

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<sup>1</sup>Stevens pleaded guilty in both cases in a single plea agreement.

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.

First, Stevens claimed he did not make a verbal response to the district court's question regarding whether he was guilty of aggravated stalking which also included the facts and elements of aggravated stalking. Therefore, he claims the record does not demonstrate he admitted to the facts underpinning his conviction or that he understood the elements of the crime.

The district court conducted an evidentiary hearing, and based on the totality of the circumstances, concluded Stevens failed to demonstrate his plea was invalid. Despite his claims to the contrary at the evidentiary hearing, Stevens stated at the change of plea hearing that he read the plea agreement and his counsel went through the plea agreement page by page with him. The plea agreement set forth the elements and factual bases for the crimes Stevens pleaded guilty to. Further, while the record shows Stevens did not make an audible answer to the district court's question regarding aggravated stalking, Stevens failed to demonstrate he made no response to the district court's question. Moreover, earlier in the hearing, Stevens indicated he was pleading guilty to all of the charges. Finally, Stevens did not specifically plead he did not understand the elements or the facts regarding the aggravated stalking charge. We conclude the district court did not abuse its discretion by denying this claim.

Stevens also claimed his plea was invalid because the district court misinformed Stevens regarding the potential maximum sentence he faced. The district court concluded Stevens failed to demonstrate his plea was invalid based on the totality of the circumstances. At the plea canvass, after correctly informing Stevens of the possible penalties he faced, the district court stated,

When it comes to sentence you, I'm free to do whatever I think is the right thing. If everybody in court recommends probation, I could still give you the maximum sentence if I wanted to, and it looks like that would be like ten years in prison or something, if I wanted to; do you understand?

This was a misstatement because Stevens was facing a potential maximum sentence of more than ten years in prison. Stevens, however, failed to demonstrate this misstatement affected the validity of the plea because he was correctly informed of the potential maximum penalties in the guilty plea agreement and during the plea canvass. Further, Stevens did not specifically allege he misunderstood the potential penalties based on this misstatement by the district court. Therefore, we conclude the district court did not abuse its discretion by denying this claim.

Next, Stevens claims the district court erred by denying his claims of ineffective assistance of appellate counsel. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective

when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697. We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Stevens claimed appellate counsel was ineffective for failing to argue the sentencing enhancement imposed pursuant to NRS 193.166 should be stricken because the district court failed to state it considered the factors outlined in NRS 193.166(2). Stevens failed to demonstrate this claim had a reasonable probability of success on appeal. Because trial counsel failed to object to this error at sentencing, the appellate courts would have reviewed this claim for plain error and Stevens did not demonstrate his substantial rights were affected. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507-08 (2009). Further, had this claim been successful, the remedy would have been to remand the case for a new sentencing hearing not to strike the enhancement. Therefore, we conclude the district court did not err by denying this claim.

Second, Stevens claimed appellate counsel was ineffective for failing to argue his judgment of conviction should be amended because the sentence announced at the sentencing hearing differed from the sentence contained in his judgment of conviction.<sup>2</sup> The district court stated in its


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<sup>2</sup>At sentencing the district court stated, "Resisting a Public Officer With a Firearm, follow the recommendation of the Division, 24 plus 12, 60 plus 60." The judgment of conviction states,

to imprisonment in the Nevada Department of Corrections for a maximum term of sixty (60)

order the sentence reflected in the judgment of conviction was its intended sentence. A district court's oral pronouncement of sentence from the bench is not the final judgment, and the written judgment is controlling. See *Bradley v. State*, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1274-75 (1993). Therefore, we conclude the district court did not err by denying this claim.

Having concluded Stevens is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Robert W. Lane, District Judge  
Law Office of Christopher R. Oram  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

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months and a minimum parole eligibility of twenty-four (24) months with a consecutive enhancement per 193.166 of imprisonment in the Nevada Department of Corrections for a maximum term of sixty (60) months and a minimum parole eligibility of twenty-four (24) months.