IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DOUGLAS KAYLOR,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36906

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 dismissing a post-conviction petition for a writ of habeas corpus.

On March 31, 2000, the district court convicted appellant Richard Douglas Kaylor, pursuant to a guilty plea, of burglary and sentenced him to serve two to ten years in prison. Kaylor did not pursue a direct appeal.

On September 21, 2000, Kaylor filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court did not order the State to file a return or otherwise answer the petition. Pursuant to NRS 34.750 and 34.770, the district court also declined to appoint counsel to represent Kaylor or to conduct an evidentiary hearing. On October 11, 2000, the district court dismissed the petition because it failed to allege sufficient specific facts and raised claims that were belied or repelled by the record. This appeal followed.

In his petition, Kaylor claimed that his plea was involuntary and that trial counsel was ineffective because he was led to believe that he would receive a maximum term of no more than five years and because counsel refused to file a motion to withdraw the plea after the district court imposed a maximum term in excess of five years. We conclude that

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the district court did not err in rejecting these claims because they are belied or repelled by the record.[1]

The written plea agreement informed Kaylor that the offense to which he was pleading guilty carried a possible sentence of one to ten years in prison. As part of the plea negotiations, the State agreed to recommend a sentence of two to five years in prison. However, the plea agreement informed Kaylor that the district court was not bound by that recommendation and could impose any sentence within the statutory range. This information was repeated during the oral plea canvass. At that time, Kaylor indicated that he understood the negotiations, the possible sentence, that sentencing was entirely within the district court's discretion, and that the district court could sentence him to more prison time than recommended by the parties. Kaylor also indicated that he had not been promised anything in order to get him to plead guilty. Given the totality of the circumstances, it is clear that Kaylor understood the consequences of his plea and that the district court was not bound by the recommendation made pursuant to the plea agreement.[2] Moreover, as we have stated in previous cases, a defendant's "mere subjective belief . . . as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing."[3] Finally, because a motion to withdraw the guilty plea on this ground would not have been successful, we conclude that counsel's failure to file such a motion did not prejudice Kaylor.[4]

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

[2]See State v. Freese, 116 Nev. ___, 13 P.3d 442 (2000); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

[3]Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

[4]See Strickland v. Washington, 466 U.S. 668 (1984).

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General/Carson City
Washoe County District Attorney
Richard Douglas Kaylor
Washoe County Clerk

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[5]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).