

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM T. SMITH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36974

FILED

DEC 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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 December 14, 1999 the district court convicted appellant, pursuant to an Alford¹ plea, of battery with substantial bodily harm. The district court sentenced appellant to serve a maximum term of forty-eight (48) months with a minimum parole eligibility of twelve (12) months in the Nevada State Prison with eighty-two (82) days credit for time served. Appellant did not file a direct appeal.

On July 6, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a supporting brief. 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 October 5, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his guilty plea was involuntary because he received ineffective assistance of counsel. Specifically, appellant claimed that prior to the entry of his guilty plea, counsel failed to present him with the victim's hospital report "which clearly showed that [appellant] did not cause the injury," and as a result, appellant's guilty plea was not knowingly and intelligently entered.

A guilty plea is presumptively valid, and an appellant carries the burden of establishing that the plea was not entered knowingly and

¹See North Carolina v. Alford, 400 U.S. 25 (1970).

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intelligently.² Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³

We conclude the district court did not err in denying this claim. Appellant did not support this claim with specific factual allegations, which if true, would entitle him to the relief requested.⁴ Appellant did not provide a copy of the victim's hospital report or allege specifically how the contents of the report clearly showed that appellant did not cause the victim's injuries. Moreover, this court has previously held that a challenge to the voluntariness of an Alford plea based upon a claim of actual innocence is "essentially academic."⁵ Finally, appellant was properly canvassed. Appellant's counsel informed the district court that appellant was entering an Alford plea to avoid the possibility of more serious charges and penalties. A factual basis was provided for the plea. During the plea canvass, appellant was personally advised that he could potentially receive a sentence of five years in the Nevada State Prison, and may not be placed on probation. Appellant confirmed that he understood the possible sentence and the constitutional rights that he was waiving. Appellant stated that he signed and understood the guilty plea agreement which also informed him, among other things, of the constitutional rights he was waiving and the possible sentence. Appellant also stated that he was pleading guilty freely and voluntarily. Therefore, appellant failed to demonstrate that his guilty plea was involuntary or unknowingly entered. Furthermore, in exchange for appellant's guilty plea the State did in fact agree to dismiss other charges. Thus, appellant failed to demonstrate that but for counsel's errors he would not have pleaded guilty.⁶

²Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

³Hubbard, 110 Nev. at 675, 877 P.2d at 521.

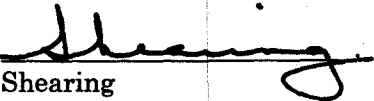
⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

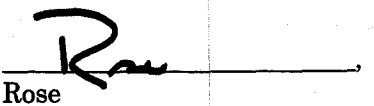
⁵See Hargrove, 100 Nev. at 503, 686 P.2d at 226.

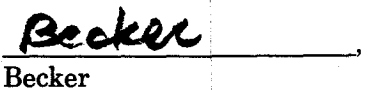
⁶Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
William T. Smith
Clark County Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).