

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANDRE JOSEPH KING, A/K/A ANDRE  
JOSEPH HARDIMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75653-COA

**FILED**

JUL 17 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Andre Joseph King appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 2, 2016, and a supplemental petition filed on September 22, 2017. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

King argues the district court erred by denying his claim that counsel was ineffective for failing to adequately inform him about the consequences of his plea. Specifically, he claimed he did not see his plea agreement until moments before he signed it, he was rushed and did not have adequate time to review it and understand it, and he believed he could receive a sentence of "20 years to life without the possibility of parole" which meant a flat sentence of 20 years in prison. Therefore, he claimed, based on his counsel's ineffectiveness, his plea was not knowingly, voluntarily, and intelligently entered.

To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, petitioner would

not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). 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).

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 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. *Id.* 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). After sentencing, a motion to withdraw guilty plea may only be granted to correct manifest injustice. See NRS 176.165.

At the change of plea hearing, the district court canvassed King about the guilty plea agreement. When the district court went through the potential penalties, King got upset and told the district court he would not take "life without." The district court explained "the minimum range on first degree murder is 20 to 50, a definite term; a life – 20 on the bottom, a life with the possibility of parole; or 20 on the bottom, life without the possibility of parole." King continued to say he would not take a "life without." The district court then stated it could not go through with the plea canvass and King's attorneys requested time to discuss the plea with

King. After 17 minutes, the parties came back and the district court started its canvass again. The district court again explained:

The range of punishment on a murder, first degree murder, is 20 to 50 years, it's 20 to life with the possibility of parole, or it's 20 to life without the possibility of parole and no one can promise you any outcome. This is obviously a non-probationable offense on the murder. So the minimum you're looking at is 20 on the bottom and a potential life without.

At the evidentiary hearing, King testified his attorneys explained the potential consequences, including that he could receive life without the possibility of parole. He also testified he understood all of the potential penalties. He further testified his misunderstanding came from the district court's statement that "it's 20 to life without the possibility of parole." He also stated he believed that what the district court says is "golden."


The district court found King failed to demonstrate his counsel were deficient or prejudice resulting from a failure to explain or communicate with him regarding the consequences of his plea. Further, the district court found King failed to demonstrate his plea was not knowingly, voluntarily, or intelligently entered. We conclude the record supports the decision of the district court.

King's testimony demonstrated counsel informed him about the potential consequences of his plea and that he understood them. While the district court's wording of the potential life without the possibility of parole sentence was not clear, it does not change the fact King was correctly informed of the consequences by his attorneys, and in the guilty plea agreement, and he testified he understood them. Accordingly, King failed to demonstrate counsel was ineffective or that his plea was invalid.

Therefore, we conclude the district court did not err by denying the petition,  
and we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. William D. Kephart, District Judge  
Ornoz & Ericsson, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk