

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL DAVID LILLIE,
Appellant,
vs.
ISIDRO BACA, WARDEN, NORTHERN
NEVADA CORRECTIONAL CENTER,
Respondent.

No. 71937

FILED

OCT 12 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael David Lillie appeals from an order of the district court denying a postconviction habeas petition, motion to appoint postconviction counsel, and motion to transport and produce inmate, all filed on October 21, 2016.¹ Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Lillie first claimed his guilty plea was involuntary and unknowing because he was misinformed as to the sentencing consequences of his plea. Specifically, Lillie claimed he was assured by the prosecutor and his counsel that the maximum sentence would not exceed 10 years. We presume the district court correctly assessed the validity of the plea and will not reverse its decision absent an abuse of discretion. *Molina v. State*, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004).

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

In both his guilty plea agreement and his guilty-plea colloquy, Lillie unequivocally indicated he understood he could be sentenced to a maximum of 15 years, no promises had been made to him regarding his sentence, and he understood his sentence was entirely at the discretion of the district court. The totality of the circumstances revealed Lillie understood the sentencing consequences of his plea. *See State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). We therefore conclude the district court did not abuse its discretion in denying this claim.

Lillie next claimed he received ineffective assistance of counsel. 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 prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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).

First, Lillie claimed counsel should not have induced the guilty plea with a promise of a 10-year maximum sentence and should have objected to the sentence or moved to enforce the guilty plea agreement. Because, as discussed above, Lillie was not promised any particular sentence and the sentence imposed was not in contravention of the plea agreement, Lillie cannot demonstrate counsel was objectively unreasonable or he was prejudiced. We therefore conclude the district court did not err in denying these claims.

Second, Lillie claimed counsel should have filed a motion to withdraw his guilty plea when the maximum sentence imposed exceeded 10 years. Post-sentencing challenges to a guilty plea must be raised in a postconviction petition for a writ of habeas corpus, not in a motion to withdraw guilty plea. *Harris v. State*, 130 Nev. ___, ___, 329 P.3d 619, 628 (2014). Thus Lillie cannot demonstrate counsel was objectively unreasonable in failing to file such a motion. Further, as discussed above, any withdrawal sought as a result of Lillie's alleged belief he could not be sentenced to more than 10 years would not have led to a reasonable probability of a different outcome. We therefore conclude the district court did not err in denying this claim.

Third, Lillie claimed counsel should have filed a formal sentencing memorandum because he faced a 15-year maximum sentence. Lillie has not demonstrated counsel was objectively unreasonable in not filing a memorandum. Further, as Lillie has not indicated what information counsel could have included in the memorandum that was not raised orally at the sentencing hearing, he has failed to demonstrate a reasonable probability of a different outcome. We therefore conclude the district court did not err in denying this claim.


To the extent Lillie claimed the cumulative effect of counsel's errors warranted relief, his claim lacked merit. Lillie failed to demonstrate any error of counsel, and accordingly, there was no error to cumulate. We therefore conclude the district court did not err in denying this claim.

In light of our disposition, we cannot conclude the district court erred in denying Lillie's motion for transport. Further, we conclude the district court did not abuse its discretion in declining to appoint

postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Thomas W. Gregory, District Judge
Michael David Lillie
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk