IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN DEE BENNETT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37169

FILED

NOV 21 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
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 and motion to withdraw guilty plea.

On January 19, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping (Count I) and one count of robbery, victim sixty-five (65) years of age or older (Count II). The district court sentenced appellant to serve in the Nevada State Prison a term of life with the possibility of parole in five (5) years for Count I, to run consecutively to two consecutive sentences of twenty-four (24) to sixty (60) months for Count II. Appellant did not file a direct appeal.

On July 19, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On August 7, 2000, appellant filed a supplement to his petition. On that same date, appellant filed a motion to withdraw guilty plea in the district court. On October 3, 2000, the State opposed the petition. On that same date, the State opposed the motion. Appellant filed replies to each of the State's oppositions. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an

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evidentiary hearing. On November 16, 2000, the district court denied appellant's petition as well as his motion. This appeal followed.[1]

In his petition, appellant first contended that he received ineffective assistance of counsel. Specifically, appellant alleged that his attorney (1) failed to inform the district court that at the time appellant entered his guilty plea, he was under the influence of prescription narcotics, and therefore incompetent to plead guilty, (2) failed to inform appellant of his right to a direct appeal, and (3) failed to challenge the admission of inculpatory statements elicited from appellant without his having first been advised of his Miranda rights.[2]

Appellant's claims of ineffective assistance are all belied or repelled by the record.[3] First, the guilty plea agreement signed by appellant stated that he was "not under the influence of any . . . drug which would impair (appellant's) ability to comprehend or understand this agreement or the proceedings surrounding . . . entry of (his) plea." At his plea canvass, appellant affirmed that he had read, understood and signed the guilty plea agreement. Furthermore, appellant answered all questions appropriately during the plea canvass. Appellant also wrote a coherent statement, requesting probation, to the Division of Parole and Probation just four days after entering his guilty plea, thus belying his claim that he was a "narcotic-induced zombie" through his guilty plea "and beyond." Second, the plea agreement informed appellant of his limited right to appeal.[4] Finally, Detective Lazarro Chavez testified at appellant's preliminary hearing that he advised appellant of his "rights per Miranda"

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[1]In his notice of appeal, appellant stated that he appealed from the district court's "denial of his petition for writ of habeas corpus." Appellant also specified, however, that "said denial" was filed on November 16, 2000. As stated above, in the order filed November 16, 2000 the district court also denied appellant's motion to withdraw guilty plea. Therefore, this court elects to construe appellant's notice of appeal to include an appeal of the denial of his motion.

[2]Miranda v. Arizona, 384 U.S. 436 (1966).

[3]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[4]See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

and that appellant agreed to waive his Miranda rights.[5] Thus, appellant failed to establish that defense counsel's performance was deficient, or that counsel's deficient performance prejudiced the defense.[6]

Appellant next contended that his guilty plea was unknowing and involuntary because "the court failed to ascertain (appellant's) understanding of the elements of first degree kidnapping and robbery, victim sixty-five (65) years or older." This claim is belied by the record as well: an amended information attached to appellant's guilty plea agreement clearly set forth the elements of these offenses. Further, during the plea canvass, the district court elicited a detailed factual admission from appellant.

Appellant appears to have presented two grounds for his motion to withdraw guilty plea. First, he argued that his plea was involuntary because, at the time of his plea, he was under the influence of prescription narcotics for treatment of pain associated with multiple prosthetic hip replacement surgeries. As discussed above, this claim is not supported by the record. Second, appellant alleged that he is factually innocent, and thus his guilty plea must be withdrawn to "[t]o correct manifest injustice."[7] Specifically, appellant alleged that he "was led to believe . . . that the victim in the instant case . . . was . . . another piece of a puzzle in setting up (a) sting operation." "The question of an accused's guilt or innocence is generally not at issue in a motion to withdraw a guilty plea."[8] Moreover, the record yet again belies appellant's claim. At the plea canvass, appellant assured the district court that his plea was freely and voluntarily given. Appellant's signed plea agreement also stated that his plea was voluntary and not the product of coercion. Moreover, the victim of the instant offenses was a seventy-eight-year-old

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[5]Miranda, 384 U.S. 436.

[6]Kirksey, 112 Nev. at 987, 923 P.2d at 1107 (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

[7]See NRS 176.165 (providing, in pertinent part, that a judgment of conviction may be set aside and the guilty plea withdrawn after sentencing "[t]o correct manifest injustice").

[8]See Hargrove, 100 Nev. at 503, 686 P.2d at 226.

woman, an unlikely focus of, or participant in, any "sting operation." Further, appellant made a detailed factual admission, agreeing that he had "sprayed mace on (the victim) . . . beat, struck, hit her in the face several times with a fist (and) wrapped her up with duct tape." Thus, appellant failed to carry his burden of alleging facts sufficient to support his contention that his plea was involuntary and unknowing or that the withdrawal of his plea was necessary to correct manifest injustice.[9]

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.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[11]

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Steven Dee Bennett
Clark County Clerk

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[9]See NRS 176.165; see also Baal v. State, 106 Nev. 69, 787 P.2d 391 (1990) (holding that a guilty plea is presumptively valid, and the burden is upon appellant to prove that the district court's denial of the motion constituted a clear abuse of discretion).

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

[11]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.