

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM ALLEN LOVELAND,

No. 37185

Appellant,

vs.

WARDEN, LOVELOCK
CORRECTIONAL CENTER, CRAIG
FARWELL,

Respondent.

FILED

DEC 17 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 Jim Allen Loveland's post-conviction petition for a writ of habeas corpus.

On November 10, 1999, the district court convicted Loveland, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced appellant to serve seventy-two to one hundred eighty months in the Nevada State Prison and assessed a fine of five thousand dollars. Loveland did not file a timely direct appeal.

On August 28, 2000, Loveland filed a proper person post-conviction petition for a writ of habeas corpus in the district court. 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 December 7, 2000, the district court denied Loveland's petition. This appeal followed.

In his petition, Loveland first argued that his guilty plea was not knowingly or voluntarily entered. Loveland alleged that the district court misinformed him about the mandatory minimum sentence for trafficking in a controlled substance. Loveland also claimed that the

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district court failed to inform him of the possibility that he could be required to pay a fine.

The defendant has the burden of showing that his guilty plea was not entered knowingly and voluntarily.¹ In determining whether a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.² On appeal from a district court decision regarding the validity of a guilty plea, this court "will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."³

The record in this case demonstrates that Loveland knowingly and voluntarily pleaded guilty. During the plea canvass, the district court inquired as to whether Loveland was pleading guilty freely and voluntarily. Loveland responded affirmatively. Although the parties negotiated a term of seventy-two to one hundred eighty months, the district court told Loveland that it could impose any term within the statutory limits. Immediately thereafter, the district court directed the prosecutor to state the statutory minimum and maximum term for trafficking. The prosecutor informed Loveland that he was "looking at a possible term of two to fifteen years in the Nevada State Prison [and] a fine of up to a hundred thousand dollars." Loveland then indicated that he understood the possible sentence. The signed guilty plea memorandum also clearly reflects the parties' negotiated agreement, statutory minimum and maximum term, and potential fine. Given the totality of the circumstances, we conclude that the district court did not abuse its

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

²Id. at 271, 721 P.2d at 367; see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).

³Bryant, 102 Nev. at 272, 721 P.2d at 368.

discretion in finding that Loveland knowingly and voluntarily pleaded guilty.

Loveland next argued that his attorney provided constitutionally ineffective assistance by failing to inform him of the statutory minimum term and possible fine for trafficking.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based upon a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.⁴ A petitioner must also demonstrate a reasonable probability that, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial.⁵ A court need not consider both prongs of this test if the petitioner fails to make a showing on either prong.⁶

We conclude that Loveland has failed to meet his burden on this claim. Even assuming that counsel erred by not informing Loveland of the statutory minimum sentence and the possible fine, Loveland has not demonstrated prejudice. By signing the guilty plea memorandum, Loveland acknowledged that he could be ordered to serve a term of two to fifteen years and pay a fine of up to one hundred thousand dollars. The same was explained to Loveland before the district court accepted his plea. Because he pleaded guilty after these explanations, we conclude that Loveland has not demonstrated a reasonable probability that absent his attorney's error he would have insisted on proceeding to trial. The district court properly denied relief on this claim.

Loveland also claimed that his attorney informed him that he did not have the right to appeal any of the court's decisions due to entry of

⁴Kirksey v. State, 112 Nev. 980, 923 P.2d 1102, (1996).


⁵Hill v. Lockhart, 474 U.S. 52, 59 (1985).

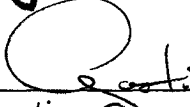
⁶Strickland v. Washington, 466 U.S. 668, 697 (1984).


his guilty plea. We conclude that Loveland is not entitled to relief. The district court informed Loveland of his right to a direct appeal from a guilty plea during the plea canvass. Therefore, Loveland cannot demonstrate any prejudice.⁷

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Jim Allen Loveland
Washoe County Clerk

⁷See Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.