

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAYRA ISABEL CORREA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37228

FILED

FEB 26 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

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 October 13, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of possession of stolen property. The district court sentenced appellant to serve two consecutive terms of forty-eight to one hundred and twenty months in the Nevada State Prison. No direct appeal was taken.

On July 28, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. 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 November 14, 2000, the district court denied appellant's petition. This appeal followed.

In her petition, appellant first contended that her trial counsel rendered ineffective assistance. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that her counsel's performance fell below an objective standard of reasonableness. Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.¹

First, appellant claimed that she would not have entered a guilty plea if trial counsel had not pressured her. This claim is not supported by the record on appeal.² During the guilty plea canvass, appellant affirmatively indicated that no one was forcing her to enter her plea and that her plea was freely and voluntarily entered.

¹See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

²See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212, 213-14 (1973) ("When an accused expressly represents in open court that his plea is voluntary, he may not ordinarily repudiate his statements.").

Second, appellant claimed that her trial counsel did not confer with her regarding the contents of the plea agreement. Appellant specifically argued that her trial counsel had not discussed the right to a jury trial, right of confrontation, or the State's burden of proof. This claim is likewise not supported by the record on appeal.³ Appellant acknowledged that the guilty plea agreement was read to her in Spanish and that she understood everything in the plea agreement. Appellant affirmatively indicated that the criminal information was read to her in Spanish and that she thoroughly understood the charges against her. Appellant indicated that she had reviewed the waiver of constitutional rights contained in the plea agreement. Appellant also indicated that she understood the potential penalties for each count. Finally, in signing the written guilty plea agreement, appellant acknowledged that "[a]ll of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney."

Third, appellant argued that her trial counsel did not advise her regarding the legality of the vehicle stop and search. Appellant failed to provide any facts in support of this claim. Thus, appellant failed to demonstrate her counsel was ineffective in this regard.

³See Hargrove, 100 Nev. 498, 686 P.2d 222.

Fourth, appellant argued that her trial counsel did not present any theory of defense and only advised her to enter a guilty plea. Specifically, she argued that her trial counsel failed to advise her about the issue of actual possession of stolen property and that another person in the vehicle had claimed possession of the stolen property. She also argued that her trial counsel failed to discuss with her as a defense to burglary the fact that she did not intend to commit a felony when she entered the various shops. Appellant failed to demonstrate that her counsel's performance was deficient in this regard. Appellant acknowledged, in the written guilty plea agreement, that her trial counsel had discussed all available defenses with her and that her trial counsel had discussed all of the elements of the original charges with her. When police searched the vehicle in which appellant was a passenger the police discovered stolen merchandise from various stores with a value of approximately \$27,000. During the plea canvass, appellant admitted that she had entered a store with the intent to steal from the store and that she did steal \$2500 worth of merchandise. In exchange for her guilty plea to one count of burglary and one count of possession of stolen property, the State agreed to the dismissal of one additional count of burglary and eleven counts of possession of stolen property. Thus, appellant further failed to demonstrate that she was prejudiced by counsel's representation.

Fifth, appellant argued that her trial counsel did not inform her that the district court was not bound by the terms of the plea agreement. During the guilty plea canvass, appellant affirmatively responded that she understood that sentencing was a matter left to the district court. The written guilty plea agreement, which appellant acknowledged was read to her in Spanish, also informed her about the district court's discretion in sentencing matters. Thus, appellant failed to demonstrate that her counsel was ineffective in this regard.⁴

Next, appellant raised several claims that her trial counsel was ineffective at sentencing. To state a claim of ineffective assistance of counsel, a defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁵ The court need not consider both

⁴The State followed the terms of the plea agreement at sentencing. In exchange for her plea, the State agreed not to oppose the sentences running concurrently for the two counts if she did not have any prior felony convictions. At sentencing, the State informed the court that she had five prior felony convictions and recommended that the sentences for each count be run consecutively to one another.

⁵See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

prongs of the Strickland test if the defendant makes an insufficient showing on either prong.⁶

First, appellant claimed that her trial counsel failed to instruct her that she should call mitigating witnesses at sentencing and that her trial counsel failed to present any mitigating facts at sentencing. Appellant further claimed that her trial counsel failed to discuss with her preparation of a sentencing memorandum and failed to discuss the statement she was to make at sentencing. Appellant failed to support these claims with any facts.⁷ Appellant did not offer the names of any mitigating witnesses or what these witnesses would have offered in mitigation. Appellant's trial counsel did inform the district court that she had worked for a design company for two years and that she was an honorable and responsible employee. Appellant failed to offer any additional mitigating facts that her counsel should have prepared and presented at sentencing. Thus, we conclude that she failed to demonstrate her counsel was ineffective in this regard.

Second, appellant claimed that her trial counsel did not discuss the presentence report with her or the recommendation of the

⁶See Strickland, 466 U.S. at 697.

⁷See Hargrove, 100 Nev. 498, 686 P.2d 222.

Department of Parole and Probation. Again, appellant failed to support this claim with any facts.⁸ Appellant did not argue that the presentence report contained any erroneous information. Appellant did not offer any argument for how discussion of the recommendation of the Department of Parole and Probation would have changed the outcome of her sentencing hearing. Thus, appellant failed to demonstrate that her counsel was ineffective in this regard.

Next, appellant claimed that her trial counsel did not acknowledge her request to withdraw her plea on the ground that she was innocent. Appellant offered no facts in support of this claim.⁹ As discussed above, appellant informed the district court that she entered her plea freely and voluntarily. "The question of an accused's guilt or innocence is generally not at issue in a motion to withdraw a guilty."¹⁰ Appellant failed to demonstrate that her counsel was ineffective in this regard.

⁸See id.

⁹See id.

¹⁰See id. at 503, 686 P.2d at 226.

Next, appellant claimed that her trial counsel failed to inform her of her right to a direct appeal. Appellant is not entitled to relief on this claim. There is no constitutional requirement that counsel must always inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.¹¹ Appellant does not allege that she asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Moreover, the written guilty plea agreement, which was read to appellant in Spanish and signed by appellant, informed her of her limited right to a direct appeal.¹² Therefore, appellant failed to demonstrate that her counsel was ineffective in this regard.

Next, appellant raised several claims challenging the validity of her plea. A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and

¹¹See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).

¹²See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

intelligently.¹³ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.¹⁴

First, appellant claimed that her plea was unknowing and involuntary because she never received a written copy of the plea agreement in Spanish. Appellant failed to carry her burden on this claim. During the plea canvass, appellant acknowledged that the plea agreement had been read to her in Spanish. Further, appellant indicated that she did not have any questions regarding the contents of the plea agreement and that she understood everything in the plea agreement.

Second, appellant claimed that her plea was the result of a promise of leniency at sentencing. Appellant argued that her trial counsel informed her she would get one to two years if she accepted the plea. Appellant also failed to carry her burden on this claim. Appellant was informed during the plea canvass of the maximum sentence on each count. Appellant further affirmatively indicated that she understood that sentencing was a decision left to the district court. The written guilty plea

¹³See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

¹⁴See Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

agreement further correctly informed her of the potential sentences and the district court's discretion at sentencing. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate her guilty plea as involuntary and unknowing.¹⁵

Third, appellant challenged the validity of her plea on the ground that the plea canvass was inadequate because the district court did not ascertain whether appellant understood the rights she was relinquishing or the potential maximum punishment. Appellant further claimed that the district court did not inquire into whether any promises had been made. Appellant's claims are not supported by the record. The district court asked appellant if she had reviewed the constitutional rights contained on page three of the written guilty plea agreement. Appellant responded that she had reviewed those rights. The district court further asked if appellant understood those rights and that she was waiving those rights by entry of the guilty plea. Appellant affirmatively responded that she understood and waived those rights by entry of the plea. The district court explained to appellant the potential maximum sentences she faced on each count and informed appellant that whether the sentences were served concurrently or consecutively was a matter left to the district court.

¹⁵See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

The written guilty plea agreement also informed her of these facts. Finally, the written guilty plea agreement contained language that her plea was not based upon any promises or guarantees of a particular sentence by anyone. Appellant failed to demonstrate that she was entitled to relief on this claim.

Finally, appellant claimed that the district court committed judicial misconduct. Specifically, appellant complained that the district court had told her at sentencing that thievery in another country could result in the loss of her hands.¹⁶ Appellant stated that she was terrified by the district court's reference to the loss of her hands. This claim falls outside the scope of claims permitted in a habeas corpus petition based upon a guilty plea.¹⁷ Moreover, there is no indication that the district

¹⁶At sentencing, the district court commented,

I think this is one of the few times when I do agree with the recommendation [of the Department of Parole and Probation]. She's a thief.


Do you know that, young lady? You've got sticky fingers. Real sticky fingers. If you lived in Iran, they'd chop your hands off, keep you from stealing. And that's a fact, they would.

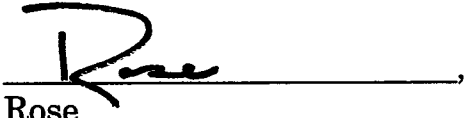
¹⁷See NRS 34.810(1)(a).

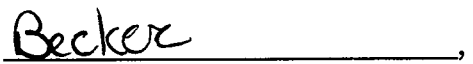
court relied upon impalpable or highly suspect evidence in sentencing appellant.¹⁸ The district court's comment on appellant's "sticky fingers" arose from the State's representation that she had five priors and was a habitual thief. Appellant failed to demonstrate that she was entitled to relief on this claim.

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.¹⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

¹⁸See Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976).

¹⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Mayra Isabel Correa
Clark County Clerk