

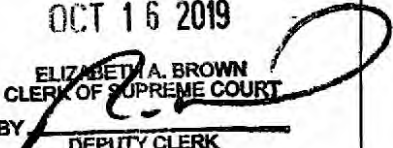
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARNELL NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77488-COA

FILED

OCT 16 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darnell Nelson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 29, 2018. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

In his petition, Nelson claimed his plea was not knowingly and voluntarily entered because the plea agreement stated "all counts will run concurrent" but he received a consecutive sentence. After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "to correct manifest injustice." NRS 176.165. 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.* 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).

In the plea agreement, Nelson and the State agreed that his sentence would be six or eight years minimum with a maximum sentence of

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20 years. The plea agreement also stated that all counts will run concurrent. Nelson received an aggregate total of 8 to 20 years in prison. All of the *counts* in the judgment of conviction were run concurrently. The consecutive sentences of which Nelson complains are for the deadly weapon enhancements for his robbery counts. However, Nelson was informed in the plea agreement that he would receive a consecutive sentence for the deadly weapon enhancement. Based on the totality of the circumstances, Nelson failed to demonstrate a manifest injustice existed such that withdrawal of his plea was necessary. Accordingly, we conclude the district court did not err by denying this claim.


Nelson also claimed his counsel was ineffective for leading "him to believe he would get concurrent time if he signed the plea agreement." 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).

This claim lacked merit. Nelson received concurrent time between the counts and received the sentence bargained for in the plea agreement. Further, Nelson failed to allege he was prejudiced. Therefore,

Nelson failed to demonstrate counsel was ineffective, and we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Darnell Nelson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk