IN THE SUPREME COURT OF THE STATE OF NEVADA

CAROLYN HOCK,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37489

FILED

NOV 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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.

On August 1, 1999, the district court convicted appellant, pursuant to a guilty plea, of possession of a controlled substance, a Category E felony pursuant to NRS 453.336. The district court sentenced appellant to serve a term of twelve (12) to forty-eight (48) months in the Nevada State Prison. Appellant did not file a direct appeal.

On June 23, 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 January 30, 2001, the district court denied appellant's petition. This appeal followed.

In her petition, appellant first alleged that she had received ineffective assistance of counsel. Specifically, appellant alleged that her attorney, Mr. Robert E. Glennen, was negligent in conducting research and therefore incorrectly assured appellant that she would receive mandatory probation. Mr. Glennen admitted, in a sworn declaration filed with the district court on appellant's behalf, that he had in fact misled

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appellant to believe she would receive mandatory probation.[1] Despite Mr. Glennen's admission regarding dereliction of his duties as counsel, we conclude that the district court did not err in denying appellant relief.

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 his 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.[2] Even assuming that appellant satisfied the first of these prongs, she failed to demonstrate that she suffered prejudice as a result of her attorney's deficient performance. First, appellant was informed at her plea canvass that she might not be eligible for mandatory probation, and that she might be sentenced to a term of imprisonment. Appellant nonetheless elected to enter a guilty plea. Moreover, the State agreed to dismiss a charge of embezzlement pending against appellant in exchange for her plea. We therefore conclude that appellant failed to show a reasonable probability that absent any error on the part of her attorney she would not have pleaded guilty and would have insisted on going to trial.

Second, appellant contended that her plea was involuntary because it was based upon her attorney's "promise" that she would receive probation. Appellant's argument is without merit. The record before this court clearly demonstrates that appellant understood the consequences of

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[1]In his declaration, Mr. Glennen explained that he, as a result of having conducted negligent research, was mistaken regarding the substance of NRS 176A.100. Apparently he was unaware that probation is discretionary where a defendant "[h]ad previously had . . . probation revoked." See NRS 176A.100(b)(1). In 1990, appellant's probation had been revoked in an earlier conviction.

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

her plea.[3] In particular, the prosecutor explained to appellant at her plea canvass that she might not be eligible for mandatory probation and that she "may be looking at a prison sentence."

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.[4] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Carolyn Hock
Nye County Clerk

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[3]See State v. Freese, 116 Nev. 337, 342, 13 P.3d 442, 448 (2000) ("This court will not invalidate a plea as long as the totality of the circumstances . . . demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.").

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