IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRY ALBERT RANDLES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37576

FILED

MAR 05 2002

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Garry Albert Randles' post-conviction petition for a writ of habeas corpus.

On March 30, 1999, Randles was convicted, pursuant to a guilty plea, of one count of sexual assault of a minor under the age of 14 years. The district court sentenced Randles to serve a prison term of life in prison with the possibility of parole after 20 years. Randles filed a direct appeal, arguing that his guilty plea was invalid. This court dismissed Randles' direct appeal, concluding that his claim that his plea was invalid should be raised in the district court in the first instance.[1]

On July 11, 2000, Randles filed a post-conviction petition for a writ of habeas corpus, claiming that his guilty plea was invalid and that his counsel was ineffective. Thereafter, the district court appointed counsel to represent Randles, and Randles filed a supplemental post-conviction petition. The State then filed a motion to dismiss Randles' petition. Without conducting an evidentiary hearing, the district court denied Randles' petition, ruling that Randles had not asserted a claim

[1]Randles v. State, Docket No. 34118 (Order Dismissing Appeal, May 26, 2000).

entitling him to relief and that two of Randles' claims were belied by the record. Randles filed the instant appeal.

Randles claims that the district court erred in denying his petition because his counsel was ineffective. We disagree.

In order to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, an appellant must demonstrate that his counsel's performance fell below an objective standard of reasonableness.[2] An appellant must also demonstrate "a reasonable probability that, but for counsel's errors, [appellant] would not have pleaded guilty and would have insisted on going to trial."[3]

Randles first claims that his trial counsel was ineffective for recommending that Randles plead guilty before the district court ruled on Randles' pretrial motions. We disagree.

Before deciding to plead guilty, Randles filed a motion to dismiss, challenging the information on due process and double jeopardy grounds, and a motion for psychiatric testing of the child victims.[4] However, before the district court ruled on Randles' pretrial motions, Randles pleaded guilty to sexual assault.

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

[3]Hill, 474 U.S. at 59.

[4]We note that Randles also file a motion in limine to exclude Randles' prior convictions for misdemeanor annoying or molesting a child. The State filed a response, stating that it did not plan to introduce the prior convictions in its case-in-chief, but that they may become relevant, particularly if Randles testified on his own behalf.

Even assuming that counsel acted unreasonably in allowing Randles to plead guilty before the district court ruled on his pretrial motions, we conclude that Randles has failed to show that he would not have pleaded guilty but for his trial counsel's deficient conduct. Particularly, the record reveals that Randles informed the court that he was pleading guilty because he believed it was in his best interest and because he believed "it was the best [result] that [he was] going to get." Randles further informed the court that he "went over things pretty well" with his counsel, and that Randles had reviewed the State's evidence. In fact, Randles decided to plead only after the district court granted the State's motion to introduce the videotaped police interviews of the two nine-year-old victims. At a hearing on that motion, the State played the videotaped interviews of one of the victims.

At sentencing, Randles informed the court that after viewing that videotape, he told his counsel to plead guilty to "all the charges."[5] Further, at sentencing, counsel for Randles explained why Randles decided to plead guilty: "[Randles] said, 'I just don't want to put them through it. I don't want to put the families through it. I don't want that to happen.'" In light of Randles' statements that he was pleading guilty because he believed it was in his best interest and to avoid causing further trauma to his victims and their families, Randles has failed to show that he would not have pleaded guilty but for his counsel's deficient conduct.

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[5]Emphasis added. Although Randles agreed to plead guilty to all eight counts pending against him, Randles' counsel was able to negotiate a plea bargain with the State wherein Randles would plead guilty to one count of sexual assault and the State would dismiss the remaining seven counts of lewdness with a minor under the age of 14 years.

Moreover, Randles was not prejudiced by his counsel's advice to plead guilty before the district court ruled on his pretrial motions because those motions would have been denied. We conclude that the district court would have denied Randles' motion to dismiss the information. The information was sufficient to withstand Randles' due process challenge because it set forth adequate facts and a specific time period in which the acts of lewdness were committed.[6] Additionally, the information did not run afoul of his constitutional right to double jeopardy because the distinct acts of lewdness, even where committed as part of a single criminal encounter, were properly charged as separate counts even though some of them occurred within a relatively short period of time.[7] Similarly, Randles' motion for psychological examination of the victims would have been denied because the State was not going to employ an expert to examine the victims and Randles failed to establish a compelling need for the examinations.[8]

Randles next contends that his trial counsel was ineffective for failing to file a pretrial motion to suppress Randles' statement to the police. Specifically, Randles contends that his statement was not

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[6]See Cunningham v. State, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984) (information must allege the elements of the crime, and where time is not an element of the crime, an approximate date is sufficient).

[7]See Townsend v. State, 103 Nev. 113, 120-21, 734 P.2d 705, 710 (1987).

[8]Koerschner v. State, 116 Nev. 1111, 1116-17, 145, 13 P.3d 451, 455 (2000) (holding that the overriding question to be resolved in determining whether a sexual assault victim should be ordered to undergo a psychological examination is whether a compelling need exists for the psychological examination).

voluntary because he was too intoxicated to consent to an interview and he did not feel free to leave. We disagree.

Trial counsel did not act unreasonably in failing to file a motion to suppress because the record reveals that Randles made his statement to the police freely and voluntarily.[9] At the preliminary hearing, James Stegmaier, a Reno police detective, testified that Randles cooperated in the investigation and voluntarily went with Stegmaier to the police department to discuss a complaint a neighbor had filed against him. Stegmaier testified that he told Randles that he was not under arrest and that he was free to leave the police station at any time. Stegmaier's interview with Randles was recorded on videotape and audiotape. Stegmaier further testified that Randles was "very functional" and he did not get the impression that Randles was intoxicated. Stegmaier stated that Randles denied touching the victims in a lewd manner. Because the totality of the circumstances indicate that Randles' statement was voluntary, and therefore admissible, we conclude that counsel was not ineffective for failing to file a suppression motion. Further, even assuming that counsel acted unreasonably in failing to file a motion to suppress, Randles was not prejudiced by counsel's conduct because Randles denied touching the victims in a lewd manner.

Finally, Randles contends that his trial counsel acted unreasonably in advising Randles to plead guilty before he investigated whether Randles was too intoxicated to commit the crime of lewdness and in failing to investigate whether one of the victims had made false

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[9]A confession is admissible if, under the totality of circumstances, it is given freely, voluntarily and without coercion or inducement. Passama v. State, 103 Nev. 212, 213-14, 735 P.2d 321, 322-23 (1987).

allegations, including allegations of molestation, in the past. We conclude that counsel did not act unreasonably in advising Randles to plead guilty. Before Randles pleaded guilty, both Randles and his counsel reviewed the evidence against him, and after viewing the videotape of one of the victims, determined that there was salient evidence of Randles' guilt. Further, prior to pleading guilty to sexual assault, Randles advised the court that he discussed with counsel the State's evidence, as well as possible "legal strategies," and decided that a guilty plea was in his best interest. Finally, Randles received a substantial benefit by entering the plea agreement in that seven lewdness counts filed against him were dismissed. Accordingly, Randles has failed to show that his counsel acted unreasonably in advising him to plead guilty or that he would not have pleaded guilty had counsel conducted further investigation.

In addition to alleging that his trial counsel was ineffective, Randles claims that his plea was invalid because he was not competent to enter his plea. Particularly, Randles claims that he was incompetent to enter his plea because he had high blood pressure and a head injury, was beaten in jail, and only had an eighth-grade education. We conclude that Randles' contention lacks merit.

The defendant has the burden of demonstrating that his guilty plea was not entered knowingly and intelligently.[10] To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.[11] This court "'will presume that the

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[10]See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

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

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.'"[12]

Whether a criminal defendant may plead guilty entails a two-part inquiry: (1) whether he is competent to enter a plea; and (2) whether the guilty plea is knowing and voluntary.[13] A defendant is competent to enter a plea if he has: (1) "'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding'"; and (2) "'a rational as well as factual understanding of the proceedings against him.'"[14]

The district court did not err in rejecting Randles' claim that his plea was invalid. The record belied Randles' claim that he was not competent to plead guilty. At the plea canvass, Randles demonstrated a rational and factual understanding of the proceedings and a sufficient present ability to consult with counsel. Randles promptly responded to the district court's inquiries and informed the court that he was pleading guilty because "this one [count] I'm pleading to is the best I'm going to get." Additionally, at one point during the canvass, he told the district court: "I need to proceed on this and then I need a phone call after we're done." Because Randles' conduct at the plea canvass demonstrates that he had a rational and legal understanding of the proceedings, the district

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[12]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

[13]See Godinez v. Moran, 509 U.S. 389, 400-01 (1993).

[14]Id. at 396 (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)); see also Riker, 111 Nev. at 1325, 905 P.2d at 711.

court did not err in ruling that Randles' claim that he was not competent to plead guilty is belied by the record.

With respect to the validity of his guilty plea, Randles also contends that his plea was not knowing and voluntary because he only had an eighth-grade education and he was not informed that he was giving up his right to appeal the issues raised in Randles' pretrial motions. We disagree.

A plea is knowing and voluntary if the trial court satisfies itself that the defendant actually does understand the significance and consequences of his decision to enter the plea, such as waiving his right to a jury trial and the possible punishment faced, and that the plea is not coerced.[15] Although "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty" about his appellate rights, counsel does have an obligation to advise a defendant who pleads guilty of the right to pursue a direct appeal under certain circumstances.[16] In particular, counsel has such an obligation "when the situation indicates that the defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success."[17]

In the instant case, we conclude Randles' guilty plea was valid, despite his claim that he was not advised he was waiving his right

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[15]See Godinez, 509 U.S. at 401 n.12.

[16]Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

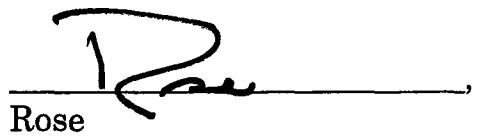
[17]Id.

to appeal the claims raised in his pretrial motions, because those claim had no reasonable likelihood of success.[18]

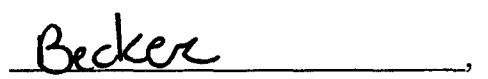
Having considered Randles' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing



_____, J.
Rose



_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General/Carson City
Washoe County District Attorney
Karla K. Butko
Washoe District Court Clerk

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[18]We also reject Randles' argument that his appellate counsel was ineffective in failing to raise the issues set forth in his pretrial motions because, in pleading guilty, Randles waived his right to appeal those issues. See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).