

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY FLETCHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82376-COA

FILED

OCT 07 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Fletcher appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 3, 2019. Eighth Judicial District Court, Clark County; Bita Yeager, Judge.

Fletcher claims the district court erred by denying his claim that his plea was not knowing and voluntary because counsel was ineffective for promising him he would receive a sentence of 10 to 25 years in prison for second-degree murder if he pleaded guilty. He claims that since he had been promised the 10-to-25-year sentence, the information in the guilty plea agreement and in the guilty plea canvass regarding the possibility of a life sentence did not apply to him.

After sentencing, a district court may permit a petitioner to withdraw his guilty plea where necessary "to correct a manifest injustice." NRS 176.165. Manifest injustice may be shown by demonstrating ineffective assistance of counsel. *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). 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). “[M]ere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.” *Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

The district court held an evidentiary hearing on this claim. At the hearing, both of Fletcher’s counsel testified they did not and would not have promised him a sentence of 10 to 25 years in prison. They testified they would have explained all of the potential penalties he was facing by accepting the plea agreement. In the guilty plea agreement and during the guilty plea canvass, Fletcher was informed and acknowledged what the potential penalties were for second-degree murder. He was also informed that the sentence was up to the judge and he acknowledged that he was not promised a particular sentence. Further, the guilty plea agreement stated that the parties were free to argue about the sentence for second-degree murder but the parties stipulated to a 2-to-10-year sentence for the deadly weapon enhancement. Therefore, the district court concluded Fletcher failed to demonstrate counsel were ineffective or that a manifest injustice required his plea be withdrawn.

The record supports the decision of the district court. While the district court did not make a specific credibility determination with regard to counsel or Fletcher, based on its denial of the petition, the district court believed counsel did not promise Fletcher a sentence of 10 to 25 years. This finding is supported by the testimony of counsel and the fact that Fletcher was informed of the potential penalties, he was not promised a particular sentence, the sentence was up to the judge, and the parties were specifically

free to argue on the second-degree murder sentence but stipulated to a sentence for the deadly weapon enhancement. Further, while Fletcher maintains he was promised a 10-to-25-year sentence, he also testified that counsel told him he was "most likely" to get that sentence, which falls short of a promise. Fletcher's subjective belief in the face of the plea agreement and the plea canvass telling him otherwise was not sufficient to invalidate his guilty plea as involuntary or unknowing. Therefore, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Bita Yeager, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk