IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY SANTAMARINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37719

FILED

FEB 12 2002

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 July 31, 2000, the district court convicted appellant, pursuant to a guilty plea, of attempted aggravated stalking. The district court sentenced appellant to serve a term of four to ten years in the Nevada State Prison. Appellant did not file a direct appeal.

On January 4, 2001, 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 March 21, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant challenged the validity of his guilty plea. Specifically, appellant contended that he had entered his plea with the understanding he would receive a one to ten year sentence.

A guilty plea is presumed valid, and the defendant has the burden of establishing that the plea was not entered knowingly and intelligently.[1] A lower court's determination of the validity of a plea will not be reversed absent a clear showing of an abuse of discretion.[2] Further, a trial court may properly accept a guilty plea, "if the trial court sufficiently canvassed the defendant to determine whether the defendant knowingly and intelligently entered into the plea."[3] Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[4]

Our review of the record on appeal reveals that the district court did not err in determining appellant's claim lacked merit.

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[1]Paine v. State, 110 Nev. 609, 619, 877 P.2d 1025, 1031 (1994) (citing Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986)).

[2]Id.

[3]Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990) (citing Williams v. State, 103 Nev. 227, 230, 737 P. 2d 508, 510 (1987)).

[4]See Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975).

Appellant's claim is belied by the record on appeal.[5] The signed plea agreement stated that appellant understood that his sentence would be determined by the court within the limits prescribed by statute, and that the court would not be obligated to accept a recommendation of either the State or the defense. Additionally, appellant was thoroughly canvassed. The district court informed appellant of the charge against him, the elements of the charged offense, potential sentence, and the waiver of constitutional rights by entry of the guilty plea. Appellant affirmed that his attorney explained the elements of the charge against him, the possible defenses, and that his guilt would have to be proved beyond a reasonable doubt. Further, appellant affirmed that he had read and understood the written plea agreement and that no promises or threats were made to induce him to plead guilty. Finally, appellant affirmed that he believed it was in his best interests to plead guilty. Thus, we conclude that the district court did not err in determining that appellant failed to meet his burden of demonstrating his plea was not entered into knowingly and intelligently.

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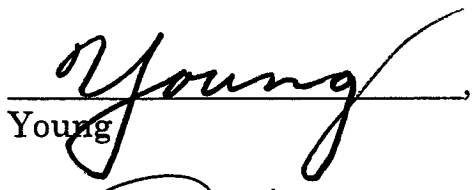
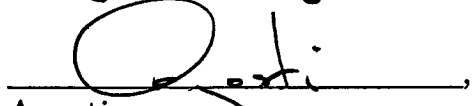
[5]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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.[6] Accordingly, we

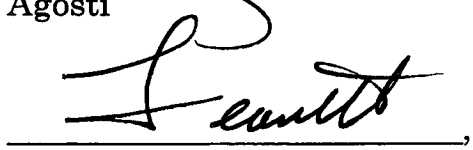
ORDER the judgment of the district court AFFIRMED.



_____, J.
Young



_____, J.
Agosti



_____, J.
Leavitt

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
Jimmy Santamarina
Clark County Clerk

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[6]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).