

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEQUANA BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84042-COA

FILED

JUL 08 2022

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

ORDER OF AFFIRMANCE

Lequana Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 29, 2020, and a supplemental petition filed on June 14, 2021. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Brown argues that the district court erred by denying her claim that her plea was invalid. After sentencing, a district court may permit a petitioner to withdraw his or her guilty plea where necessary “[t]o correct a manifest injustice.” NRS 176.165. “Manifest injustice may . . . be demonstrated by a failure to adequately inform a defendant of the consequences of [her] plea.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (internal quotation marks omitted). 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).

In November 2019, Brown was offered a global plea deal to plead to two counts (one count each in two different cases) and agree to a

sentence of 6 to 15 years in prison. The offer was revoked in December 2019. The offer was re-extended in January 2020, and Brown rejected it when she was told she could not get house arrest pending sentencing. Trial was set to commence on March 16, 2020. On March 4, 2020, the State filed its notice of intent to seek punishment as a habitual criminal.

On March 12, 2020, Brown agreed to plead guilty to one count of robbery with the use of a deadly weapon in this case and one count of robbery in another case, she agreed to a sentence of 4 to 10 years in each case, to be served consecutively to each other. However, when questioned by the trial-level court, Brown stated she wanted more time to think about it. The State told the trial-level court that they were revoking the offer if she did not take it then, because they were preparing for trial. Brown agreed to go forward with the plea. Brown was specifically canvassed on the sentence she was agreeing to and that the terms would be consecutive. She also asked several questions, they were answered, and she was given extra time to speak with counsel regarding her questions. Brown took issue with the use of a deadly weapon enhancement in this case because she claimed she was not in the vehicle when her codefendant pulled the gun on the manager. The district court explained to her that under an aider-and-abettor theory, she was liable for the things her codefendant did. She then agreed that she would enter her plea.

Shortly thereafter, Brown filed a motion to withdraw counsel and indicated she wished to withdraw her plea. The district court appointed alternate counsel and informed alternate counsel that Brown wanted to withdraw her plea. Prior to the date for sentencing, alternate counsel informed the district court that Brown no longer wanted to withdraw her

plea and wanted to go through with sentencing. At the scheduled sentencing hearing on June 11, 2020, alternate counsel stated that she had

spent a great deal of time talking about even in light of [Brown's ineffective-assistance-of-counsel claims regarding her prior counsel] she would still want to take the same recommendation and same negotiation after I thoroughly went over all of the like her rights and her case and like the negotiation with that.

Brown stated "absolutely" to that comment by alternate counsel. Further, at that hearing, alternate counsel negotiated for another case to be dropped in exchange for Brown's guilty plea. The parties prepared an amended guilty plea agreement, and Brown was canvassed on that agreement at a hearing a few days later. At the hearing, Brown did not have a physical copy of the amended plea agreement and did not sign it. However, alternate counsel stated she went over the amended plea agreement with Brown word for word. Further, Brown agreed that alternate counsel signed the amended plea agreement in her stead based on COVID-19 protocols. Brown agreed to go forward with the plea canvass.

During the canvass, Brown stated she understood the plea agreement and did not have any questions. Specifically, she stated, "No. Whatever questions I had was answered, so I understand everything." She also agreed with the factual renditions regarding the charges as alleged in the amended information. She was also again specifically canvassed on the sentence agreed to by the parties of two consecutive terms of 4 to 10 years in prison. Thereafter, Brown was sentenced as agreed to in the plea agreement. In her postconviction petition underlying this appeal, Brown claimed her guilty plea was not knowingly, voluntarily, and intelligently entered.

First, Brown argued she did not understand the consequences of her plea because the plea negotiation process was confusing and she did not understand the amount of time she was agreeing to in the guilty plea agreement. The district court held an evidentiary hearing on Brown's postconviction petition. At the evidentiary hearing, alternate counsel testified that she spoke with Brown at length on several occasions regarding the plea negotiations and their outcome, the possibility of withdrawing her plea, and the possible outcomes at trial. After these discussions, Brown agreed to continue with her guilty plea. The district court found alternate counsel to be credible and found that based on the amended guilty plea canvass, Brown failed to demonstrate she was confused about the plea or the possible consequences. Further, Brown was specifically canvassed regarding the sentence she was agreeing to in the plea agreement, and she stated she understood. Substantial evidence in the record supports the district court's findings, and we conclude Brown failed to demonstrate she did not understand the consequences of her plea.

Second, Brown argued she did not understand the plea because the district court erred by misrepresenting aider-and-abettor liability. The district court's explanation of aider-and-abettor liability in March 2020 was not complete because the district court did not explain that Brown had to have knowledge of the firearm. *See Nelson v. State*, 123 Nev. 534, 549-550, 170 P.3d 517, 528 (2007) (holding that aider-and-abettor liability requires knowledge of the firearm and benefiting from the use of the firearm). However, alternate counsel was subsequently appointed, and she testified that she explained the charges and possible defenses, including that Brown had a potential defense to the deadly weapon enhancement. Brown thus failed to demonstrate the court's earlier error caused her plea pursuant to

the amended guilty plea agreement to be invalid. Further, alternate counsel testified that given the number of charges Brown faced, and while she might be able to successfully defend against the deadly weapon enhancement, it was in Brown's best interest to take this deal. Brown stated at the change of plea hearing that she agreed that taking the deal was in her best interests. The district court found counsel to be credible and, based on the totality of the circumstances, that Brown did not demonstrate her plea was not knowingly, voluntarily, and intelligently entered. Substantial evidence supports the decision of the district court, and we conclude Brown failed to demonstrate that she did not understand the aider-and-abettor liability.

Third, Brown argued she felt coerced into pleading guilty because the State punished her for rejecting an earlier plea offer by filing a notice of intent to seek habitual criminal treatment. Brown failed to demonstrate the State punished her by filing the notice of intent as the record demonstrates the State filed its notice of intent shortly before the statutory deadline to do so. *See* NRS 207.016(2) (stating that if the notice of intent is filed separately from the indictment or information, the notice "must be filed not less than 2 days before the start of the trial on the primary offense"). Further, "a guilty plea is not coerced merely because [a defendant is] motivated by desire to avoid the possibility of a higher penalty." *Schoultz v. Warden*, 88 Nev. 135, 139, 494 P.2d 274, 276 (1972) (internal punctuation omitted) (rejecting a claim that the plea was coerced because the State threatened prosecution as a habitual criminal). Finally, Brown did not testify at the evidentiary hearing that she felt pressured into pleading guilty by the filing of the State's notice of intent. Therefore, we

conclude that Brown failed to demonstrate the filing of the notice of intent coerced her into pleading guilty.

Fourth, Brown argued her plea was invalid because she did not have a physical copy of the amended guilty plea agreement and because she did not sign the amended guilty plea agreement. As stated above, the failure to provide the physical copy of the guilty plea agreement was discussed at the plea canvass. Alternate counsel stated that she read the agreement word for word to Brown, and Brown agreed that had been done. Further, Brown agreed to go forward with the plea canvass. As to the signature, at the time the amended plea agreement was entered, there was a COVID-19 administrative order in place that stated counsel could sign a plea agreement at the direction of the client. *See* Eighth Judicial District Court Administrative Order 20-10, at 5-6. Here, alternate counsel stated she signed the amended plea agreement at the direction of Brown, and Brown agreed that she directed alternate counsel to sign. Further, Brown failed to allege how the failure to have a physical copy of the amended guilty plea agreement or her failure to sign the plea agreement rendered her plea unknowing, involuntary, or unintelligent. Moreover, Brown had a physical copy of the prior plea agreement, and the only amendment to the guilty plea agreement was that the State would dismiss an additional case against Brown. Therefore, Brown failed to demonstrate that her not having a physical copy of the amended plea agreement or that counsel signed it in her stead invalidated her plea. Considering the totality of the circumstances, we conclude that Brown failed to demonstrate the withdrawal of her guilty plea was necessary to correct a manifest injustice. Accordingly, we conclude the district court did not err by denying Brown's claim that her guilty plea was invalid.

Brown also argues on appeal that the district court erred by denying her claims that both counsel and alternate counsel were ineffective. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

First, Brown claimed counsel was ineffective for failing to communicate, failing to file a motion for a bail reduction or house arrest, and for creating a conflict by demanding Brown solicit clients for him while in jail. Brown was appointed alternate counsel to explore these claims. Brown and alternate counsel discussed these issues, and Brown still decided to plead guilty because it was in her best interests. Thus, Brown failed to demonstrate a reasonable probability she would not have pleaded guilty and would have proceeded to trial absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Brown claimed alternate counsel was ineffective because alternate counsel only had three weeks to go over the evidence,

talked Brown into pleading guilty instead of withdrawing her plea, and told the district court Brown would not be withdrawing her plea at a hearing where Brown was not present. Brown failed to demonstrate alternate counsel was not able to understand the evidence in the amount of time she was given. Further, alternate counsel testified at the evidentiary hearing that she did not talk Brown into pleading guilty but instead explained all of her options. And while alternate counsel stated at a hearing where Brown was not present that Brown would not be withdrawing her plea, Brown reaffirmed that decision at a later hearing. Therefore, we conclude Brown failed to demonstrate alternate counsel was deficient or a reasonable probability that Brown would not have pleaded guilty had alternate counsel done things differently. Accordingly, we conclude the district court did not err by denying this claim.

Having concluded that Brown is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Crystal Eller, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk