

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO MARIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38067

FILED

FEB 14 2002

ORDER OF AFFIRMANCE

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

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 March 2, 2000, the district court convicted appellant, pursuant to a guilty plea, of sexual assault with a minor under the age of 16 and robbery with the use of a deadly weapon. The district court sentenced appellant to serve the following terms in the Nevada State Prison: for the sexual assault conviction, a term of 20 years with minimum parole eligibility after 5 years; and for the robbery with a deadly weapon conviction, two consecutive terms of 180 months with minimum parole eligibility after 72 months. Appellant did not appeal from his judgment of conviction and sentence.

On February 26, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 May 30, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his guilty plea was involuntary and unknowing because: (1) his adult certification order was invalid; (2) he was not informed that probation was available for robbery; (3) the prosecutor defrauded him into pleading guilty; (4) he was not informed that his sentence for the deadly weapon enhancement was an equal term to the underlying robbery sentence; (5) he was misled as to which offense required certification prior to parole eligibility; (6) the guilty plea agreement failed to express the actual conditions of the plea; (7) his plea was the result of coercion on behalf of his attorney who misrepresented the minimum sentences; and (8) the guilty plea agreement imposed illegal restitution because it was vague, failed to identify the victim, failed to list the due date, and failed to state the purpose of the restitution.

A guilty plea is presumptively valid and the petitioner has the burden of establishing that the plea was not entered knowingly and intelligently.¹ Further, this court will not reverse a district court's determination considering the validity of a plea absent a clear abuse of discretion.²

Our review of the record on appeal reveals that the district court did not err in denying these claims. Appellant was adequately canvassed. Appellant stated that he read, understood, and signed the guilty plea agreement and had no questions regarding the agreement. He

¹See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

²See Hubbard, 110 Nev. at 675, 877 P.2d at 521.

stated that he understood the constitutional rights that he was waiving by the entry of his guilty plea. When asked if he understood the charges against him he responded affirmatively. He was informed of the possible ranges of sentences for both counts, including the equal and consecutive term for the deadly weapon enhancement, and that he was not eligible for probation. He affirmatively responded that he understood. He was also informed that in order to be eligible for parole he would have to be certified that he was not a menace to the health, safety, and morals of others and he again stated that he understood. When the facts of the crimes were recited, appellant agreed that they were correct. Lastly, appellant stated that no one was forcing him to plead guilty and that he was entering his plea freely and voluntarily. In addition, appellant's guilty plea agreement as well as the judgment of conviction adequately informed him of his requirement to pay restitution to the victim. Moreover, the district court's determination to certify appellant as an adult was proper thereby vesting jurisdiction in the district court.³ Therefore, appellant failed to carry his burden of demonstrating that his plea was involuntarily or unknowingly entered.⁴

Next, appellant claimed that his counsel was ineffective during the juvenile proceedings as well as during the district court proceedings. To state a claim of ineffective assistance of counsel sufficient

³See NRS 62.080; see also In The Matter of Seven Minors, 99 Nev. 427, 434-35, 664 P.2d 947, 952 (1983).

⁴See Bryant, 102 Nev. 268, 721 P.2d 364; State v. Freese, 116 Nev. ___, 13 P.2d 442 (2000); Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975); see also NRS 62.080.

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.⁵

Appellant claimed that his counsel was ineffective during the juvenile court proceedings because his adult certification was invalid, he failed to object or respond to the court's certification, and he failed to conduct a full investigation of appellant by failing to interview various people. We conclude that the district court did not err in denying appellant's claims. Appellant failed to demonstrate that but for counsel's errors he would not have pleaded guilty.⁶ Moreover, appellant's adult certification was proper.⁷

Next, appellant claimed that his counsel was ineffective during the district court proceedings. Specifically, he claimed that his counsel (1) failed to object to the court's acceptance of appellant's guilty plea after appellant was allegedly incorrectly informed regarding the unavailability of probation for the robbery count; (2) failed to object to the court's acceptance of appellant's guilty plea after appellant was not informed as to which offense required certification for parole eligibility; (3) failed to object when appellant was allegedly not informed that the

⁵See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁶See Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

⁷See NRS 62.080.

sentence for the deadly weapon enhancement was equal in length to the underlying sentence for robbery; and (4) coerced appellant into accepting the guilty plea offer by misrepresenting the minimum sentences.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying these claims. As determined above, appellant's was adequately canvassed and his guilty plea was knowingly and voluntarily entered, thus counsel was not ineffective for failing to object to the court's acceptance of his guilty plea or for any other reason relating to his guilty plea.⁸ Appellant failed to show that but for counsel's alleged errors he would not have pleaded and would have proceeded to trial.⁹

Next, appellant claimed that his counsel was ineffective at sentencing because he (1) failed to object to the imposition of the judgment of conviction because it contained an illegal restitution provision; (2) failed to present mitigating facts and witnesses at sentencing; and (3) failed to submit any pre-sentence memorandum to the court prior to sentencing in which he could have argued for a lesser sentence. We conclude that the district court did not err in denying these claims. As discussed prior, the restitution provision contained in the judgment of conviction was valid. Also, appellant's attorney presented letters on appellant's behalf to the court for its consideration. Appellant failed to demonstrate that his

⁸See Kirksey, 112 Nev. at, 987-88, 923 P.2d at 1107; see also Bryant, 102 Nev. 268, 721 P.2d 364.

⁹See Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

counsel's performance was unreasonable or that he was prejudiced by counsel's performance.¹⁰

Lastly, appellant claimed that his counsel was ineffective for failing to inform appellant about a direct appeal and failing to file a direct appeal raising all of the claims listed in appellant's petition. We conclude that the district court did not err in denying this claim. This court has held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" absent extraordinary circumstances.¹¹ Appellant failed to demonstrate that such circumstances existed in this case, and our review reveals none. In addition, appellant was sufficiently advised of his limited right to appeal in the written guilty plea agreement. Finally, appellant failed to demonstrate that his counsel was ineffective in failing to file an appeal on his behalf because there is no indication in the record that appellant ever expressed a desire to appeal his conviction.¹²

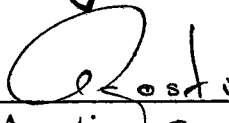
¹⁰See Strickland v. Washington, 466 U.S. 668 (1984); see also Kirksey, 112 Nev. at 987-88, 923 P.2d at 1107.

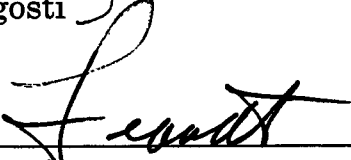
¹¹Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, ___ U.S. ___, 120 S. Ct. 1029, 1036 (2000) ("We reject a bright-line rule that counsel must always consult with the defendant regarding an appeal.").

¹²See Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

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.¹³ Accordingly, we ORDER the judgment of the district court AFFIRMED.¹⁴

 _____, J.
Young

 _____, J.
Agosti

 _____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Attorney General/Carson City
Clark County District Attorney
Mario Marin
Clark County Clerk

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

¹⁴We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.