IN THE SUPREME COURT OF THE STATE OF NEVADA

JARAMIE D. WOMACK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 38364
JARAMIE D. WOMACK, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 38617

FILED
JUL 03 2002
JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying appellant's post-conviction petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.[1]

On June 14, 2000, the district court convicted appellant, pursuant to an Alford[2] plea, of two counts of attempted murder with the use of a deadly weapon (counts I and III), two counts of first degree kidnapping of a minor with the use of a deadly weapon with substantial bodily harm (counts II and IV), one count of first degree kidnapping of a minor with the use of a deadly weapon (count V), and one count of forgery (count VI). The district court adjudicated appellant a habitual criminal as to counts I, III, V and VI, and sentenced appellant to serve the following sentences in the Nevada State Prison: for count I, life without the

[1]See NRAP 3(b).

[2]See North Carolina v. Alford, 400 U.S. 25 (1970).

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possibility of parole; for count II, life without the possibility of parole plus an equal and consecutive term for use of a deadly weapon to run concurrent to count I; for count III, life without the possibility of parole to run consecutive to count II; for count IV, life without the possibility of parole plus an equal and consecutive term for use of a deadly weapon to run concurrent to count III; for count V, life without the possibility of parole to run consecutive to count IV; and for count VI, life without the possibility of parole to run consecutive to count V. Appellant did not file a direct appeal.

On May 14, 2001, appellant filed his first 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. The district court orally denied appellant's first petition on July 24, 2001, and issued its written order on August 21, 2001. Appellant's appeal was docketed in this court in Docket No. 38364.

On August 21, 2001, appellant filed his second proper person post-conviction petition for a writ of habeas corpus in the district court.[3] 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. The district court orally denied appellant's second petition on September 17, 2001, and issued its written

[3]Appellant characterized the second petition as a "motion for rehearing petition for writ of habeas corpus post-conviction order to show cause." We elect to construe appellant's motion to be a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b).

order on September 26, 2001. Appellant's appeal was docketed in this court in Docket No. 38617.

Docket No. 38364

In his petition, appellant claimed that his plea was unknowing and that coercion by his attorney rendered it involuntary. A guilty plea is presumptively valid, and the appellant bears the burden of establishing it was not.[4] Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a guilty plea.[5] Appellant entered an Alford plea and was therefore not required to make a factual admission when pleading guilty.[6] However, in accepting an Alford plea, the district court must determine that there is a factual basis for the plea, and resolve the conflict between waiver of trial and the claim of innocence.[7] Appellant signed a written plea agreement which thoroughly stated the consequences of the plea, including the fact that the potential penalties included life without parole and the constitutional rights being waived. The plea agreement included statements that appellant understood the State would be required to prove each element of every charge at trial and he believed the plea agreement was in his best interest, and that his plea was entered voluntarily without duress, coercion, any promises of

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[4]Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (superceded on other grounds by statute as stated in Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000)).

[5]Id.

[6]See Alford, 400 U.S. 25.

[7]Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982); see also State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996).

leniency, or impairment. Moreover, the district court conducted a plea canvass during which appellant stated that he had read the plea agreement, understood it, believed it to be in his best interest, and had signed it voluntarily.[8] The district court also informed appellant he could be adjudicated a habitual criminal and receive life without parole on each count and appellant stated that he understood. Therefore, based on our review of the entire record and the totality of the circumstances, we conclude that the district court did not abuse its discretion in finding that appellant's plea was knowingly and voluntarily entered.[9]

Appellant also raised three claims of ineffective assistance of counsel. 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.[10] Further, an appellant must demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going

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[8]See Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212, 213-14 (1973) ("When an accused expressly represents in open court that his plea is voluntary, he may not ordinarily repudiate his statements to the sentencing judge.").

[9]See Gomes, 112 Nev. at 1481, 930 P.2d at 706; Bryant, 102 Nev. at 272, 721 P.2d at 368 (superceded on other grounds by statute as stated in Hart, 116 Nev. 558, 1 P.3d 969).

[10]Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

to trial.[11] This court need not consider both prongs of the test if the appellant makes an insufficient showing on either prong.[12]

First, appellant claimed that his counsel was ineffective for failing to inform appellant of his right to appeal. This claim is belied record.[13] Appellant signed a written guilty plea agreement which stated the scope of his right to appeal, thereby informing appellant of his right to appeal.[14] Therefore, counsel was not ineffective in this regard.

Second, appellant claimed that his counsel was ineffective for failing to "challenge the State's decision not to proceed with the preliminary hearing." Appellant argued that not holding a preliminary hearing "was tantamount to . . . dismissing the complaint" and pursuant to NRS 178.562(1) the State was then barred from seeking a grand jury indictment against him. This argument is without merit. NRS 178.562(1) is inapplicable because the action was never dismissed.[15] Therefore, a motion challenging this issue would not have been meritorious and appellant failed to establish that the defense was prejudiced.[16]

Third, appellant claimed that his "counsel's ineffectiveness was so deficient it denied [appellant] a fair judicial review." This claim

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[11]Id.

[12]Strickland, 466 U.S. at 697.

[13]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[14]See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

[15]See NRS 178.562(1) ("Except as otherwise provided . . . an order for the dismissal of the action . . . is a bar to another prosecution for the same offense."

[16]See Kirksey, 112 Nev. at 990, 923 P.2d at 1109.

was unsupported by any specific factual allegations that would, if true, have entitled appellant to relief.[17] Therefore, appellant failed to demonstrate that counsel was ineffective in this regard.

Finally, appellant raised eight additional claims which fall outside the narrow scope of issues that may be raised in a post-conviction petition challenging a judgment of conviction based on a guilty plea.[18]

Docket No. 38617

Appellant's second petition was successive because it presented the same issues as those in his first petition.[19] Therefore, appellant's second petition was procedurally barred absent a demonstration of good cause and prejudice.[20] Appellant presented no arguments as to why this procedural defect should be excused. Instead appellant argued that he was entitled to an evidentiary hearing on his claims. We conclude that the district court properly determined that appellant failed to excuse his procedural defaults.[21] Further, we conclude that appellant has not shown that failure to consider any of his claims

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[17]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[18]See NRS 34.810(1)(a) (providing that a post-conviction petition challenging a judgment based on a guilty plea may raise only claims of ineffective assistance of counsel or challenges to the validity of the plea).

[19]See NRS 34.810(2).

[20]See NRS 34.810(3).

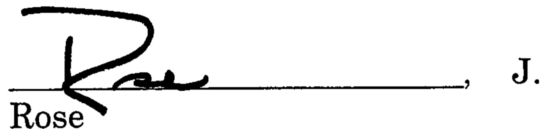
[21]See Harris v. Warden, 114 Nev. 956, 964 P.2d 785 (1998); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994); Phelps v. Director, Prisons, 104 Nev. 656, 764 P.2d 1303 (1988).

would result in a fundamental miscarriage of justice sufficient to otherwise excuse the procedural bars.[22]

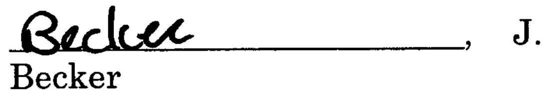
Having reviewed the records on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[23] Accordingly, we

ORDER the judgments of the district court AFFIRMED.[24]

_______________, J.
Shearing



_______________, J.
Rose



_______________, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Jaramie D. Womack
Clark County Clerk

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[22]See Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

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

[24]We have considered all proper person documents filed or received in these matters, and we conclude that the relief requested is not warranted.