

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL WYGNANSKI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38985

FILED

MAR 14 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>1</sup> Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Appellant also argued below that his plea was involuntary. The district court determined that the plea was validly entered. On appeal, this court "presume[s] that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."<sup>2</sup>

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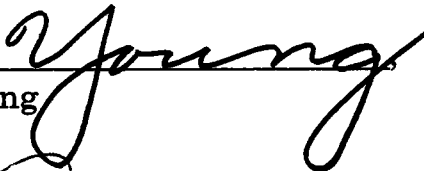
<sup>1</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

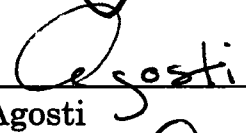
<sup>2</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

Appellant has not demonstrated an abuse of discretion in the district court's determination.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

 J.  
\_\_\_\_\_  
Young

 J.  
\_\_\_\_\_  
Agosti

 J.  
\_\_\_\_\_  
Leavitt

cc: Hon. Janet J. Berry, District Judge  
Attorney General/Carson City  
Washoe County District Attorney  
Scott W. Edwards  
Washoe District Court Clerk

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<sup>3</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.

1  
2 ORIGINAL

FILED

AMY HARVEY, Clerk

By Deona D. Sullivan  
05 Dec 2001 Deputy Clerk

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
7 IN AND FOR THE COUNTY OF WASHOE

8 \* \* \*

9 DANIEL WYGNANSKI,

10 Petitioner,

11 v.

Case No. CR00P0902

12 THE STATE OF NEVADA,

Dept. No. 1

13 Respondent.  
14 \_\_\_\_\_/

15 FINDINGS OF FACT, CONCLUSIONS OF LAW  
16 AND JUDGMENT

17 This cause came before the court upon a petition for writ  
18 of habeas corpus (post-conviction). The records of this Court  
19 reveal that petitioner was represented by Deputy Public Defender  
20 Richard Mollezo when he pleaded guilty to attempted murder with the  
21 use of a deadly weapon and attempted robbery with the use of a  
22 deadly weapon. He was sentenced to aggregate terms of twenty four  
23 to sixty years imprisonment. He did not appeal. Instead, he filed  
24 a petition for writ of habeas corpus raising several claims for  
25 relief.

26 The court appointed counsel for petitioner. Counsel  
27 filed a supplemental petition amplifying some of the arguments  
28 raised in the petition. The State answered with a general denial.  
The cause then came before the court for a hearing on October 31,

1 2001. At that hearing the court heard testimony from petitioner  
2 and from Mollezo. The court also received documentary evidence.  
3 Based upon that evidence and the relative credibility of the  
4 witnesses, the Court finds as follows.

5           Petitioner Wygnanski's testimony lacks credibility. This  
6 finding is based on the substance of his testimony as well as the  
7 court's observation of his demeanor and a review of the file. Mr.  
8 Mollezo's testimony was completely credible and supported by the  
9 record.

10           Petitioner contended in his petition that his plea was  
11 based on Mollezo's promise that he would be sentenced to exactly  
12 six to sixty years. At the hearing, petitioner may have altered  
13 his theory to allege that his plea was based not on any promise but  
14 on Mollezo's expressed hope that petitioner would not receive the  
15 maximum sentence.

16           Mollezo denied making any promises or predictions. His  
17 testimony was supported by a letter sent by him to Wygnanski  
18 detailing the potential sentences. Wygnanski's testimony that he  
19 did not receive the letter was not supported by the testimony, as  
20 indicated by his own admission that he had it with him upon his  
21 arrival at prison.

22           Petitioner claimed in his petition that when he pleaded  
23 guilty he was incompetent. The court notes first that he presented  
24 no evidence supporting the proposition that he was in fact  
25 incompetent when he pleaded guilty. In fact, his own testimony  
26 established he was aware of the nature of the charges and the  
27 available sentences and pleaded guilty armed with that knowledge.  
28 Petitioner claimed that he was motivated to plead guilty by the

1 desire to leave the jail and get on to the prison. That  
2 motivation, even if proved, did not render him incompetent, nor did  
3 it render his plea involuntary. The court notes, however, that the  
4 claim of unpleasant conditions in the jail was supported only by  
5 the testimony of Wygnanski, and contradicted in a large degree by  
6 the documentary evidence. As noted above, the court finds  
7 Wygnanski's testimony on this subject to be incredible.  
8 Accordingly, the court finds that Wygnanski has failed in his  
9 burden of showing that he was incompetent or that his plea was  
10 involuntary.

11           Petitioner claimed that his plea was coerced by the  
12 prosecutor's threat to seek the habitual criminal enhancement.  
13 Such negotiating tactics do not render a plea involuntary.  
14 Schoultz v. Warden, 88 Nev. 135, 139, 494 P.2d 274, 276 (1972).

15           At the habeas corpus hearing, petitioner revealed that  
16 the basis of his dissatisfaction with the entire criminal justice  
17 system was based on the fact that when he was first arrested he was  
18 told that he was arrested for battery with a deadly weapon, not for  
19 attempted murder. Thus, he seems to contend that the initial  
20 analysis by the arresting officer fixes and limits the availability  
21 of other charges and the jurisdiction of the court. Petitioner's  
22 concerns regarding the underlying charges are without merit. The  
23 police officer's initial analysis has no bearing on the charges  
24 ultimately preferred by the District Attorney.

25           Because petitioner failed in his burden of persuading the  
26 court that he is unlawfully imprisoned, the Petition for Writ of  
27 Habeas Corpus is denied.

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JUDGMENT

It is therefore the order and judgment of this Court that petitioner's Petition of Writ of Habeas Corpus (Post-Conviction) is hereby denied.

DATED this 5<sup>th</sup> day of December, 2001.

*Jawit Berry*  
DISTRICT JUDGE