

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS FLETCHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39207

FILED

OCT 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
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 December 7, 2000, the district court convicted appellant, pursuant to a guilty plea, of robbery. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of sixty to two hundred and sixteen months in the Nevada State Prison, to be served consecutive to appellant's sentences in district court case numbers C110654 and C110683. Appellant did not file a direct appeal.

On September 24, 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 February 6, 2002, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his plea was not entered knowingly and voluntarily because he did not know that he could be adjudicated a habitual criminal. A guilty plea is presumptively valid,

and the appellant bears the burden of establishing it was not.¹ Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a guilty plea.² At the plea canvass appellant's counsel told the district court that as a result of negotiations the State and defendant would recommend "small habitual criminal treatment," but the defense reserved the right to argue for the minimum sentence. During the plea canvass appellant stated that his plea was freely and voluntarily given, that he understood the charges in the amended information,³ and that he understood the negotiations.⁴ In addition, appellant signed a written plea agreement which included the amended information giving notice of the State's intention to seek appellant's adjudication as a habitual criminal. 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

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

²Id.

³The original information was filed on September 7, 2000 and did not include notice that the State intended to recommend that appellant be adjudicated a habitual criminal if found guilty. A notice to amend the information and the amended information were filed on October 26, 2000. The amended information contained notice of the State's intent to seek habitual criminal adjudication. The district court granted the motion to amend the information on November 6, 2000.

⁴See 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.").

discretion in finding that appellant's plea was knowingly and voluntarily entered.⁵

Appellant also raised five claims of ineffective assistance of counsel. To establish ineffective assistance of counsel, a petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense.⁶ To show prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."⁷ "Tactical decisions are virtually unchallengeable absent extraordinary circumstances."⁸ A court may consider the two test elements in any order and need not consider both prongs if an insufficient showing is made on either one.⁹

First, appellant claimed that counsel was ineffective for refusing to investigate the facts and the law. Appellant argued that counsel "simply went to the prosecutor's theory of the case . . . without conducting an independent study of the defensible issues and how the law

⁵See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996); Bryant, 102 Nev. at 272, 721 P.2d at 368.

⁶Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

⁷Kirksey, 112 Nev. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁸Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (citing Strickland, 466 U.S. at 691) abrogation on other grounds recognized by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000).

⁹Strickland, 466 U.S. at 697.

applies to the facts surrounding the case." Appellant failed to show a reasonable probability that but for counsel's alleged error he would not have pleaded guilty and would have insisted on going to trial. Therefore, appellant failed to show that counsel was ineffective in this regard and the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for failing to present a cognizable defense and failing to consider and present a theory of self-defense. As discussed, because appellant pleaded guilty he failed to show a reasonable probability that but for counsel's alleged error he would not have pleaded guilty and would have insisted on going to trial. Therefore, appellant failed to show that counsel was ineffective in this regard and the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for failing to file a motion to dismiss based on lack of evidence and a false police report. Appellant pleaded guilty. "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."¹⁰ Therefore, appellant failed to show that counsel was ineffective in this regard and the district court did not err in denying this claim.

Fourth, appellant claimed that counsel was ineffective for stipulating to appellant's status as a habitual criminal. This claim is

¹⁰Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

belied by the record.¹¹ Counsel did not stipulate to appellant's status as a habitual criminal. The guilty plea agreement stated that "[b]oth the State and the Defendant will recommend that, upon the requisite proofs, the Defendant be adjudged a Habitual Criminal in accordance with NRS 207.010(1)(a)." (Emphasis added). In addition, NRS 207.016(6) provides that nothing in the provisions of NRS 207.010 ". . . prohibits a court from imposing an adjudication of habitual criminality based upon a stipulation of the parties." Accordingly, appellant failed to show that counsel's performance fell below an objective standard of reasonableness. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that, as a result of counsel's ineffectiveness, the presentence report contained false and misleading information. Specifically, appellant argued that the presentence report was false because it did not contain appellant's version of the facts surrounding the instant charge. Appellant appeared to argue that, had he received effective assistance of counsel, the report would have somehow been different. As discussed, because appellant pleaded guilty, he may not raise challenges to events preceding his plea.¹² Moreover, appellant failed to show that his counsel's performance affected the findings of the Department of Parole and Probation. Therefore, appellant failed to show that counsel was ineffective in this regard and the district court did not err in denying this claim.

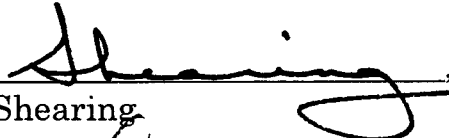
¹¹See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


¹²See Webb, 91 Nev. at 470, 538 P.2d at 165 (citing Tollett, 411 U.S. at 267).

Finally, appellant claimed that the district court abused its discretion in adjudicating him a habitual criminal because appellant did not have sufficient notice that the State intended to seek habitual criminal status. Appellant received adequate notice.¹³ Therefore the district court did not err in denying this claim.

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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁵


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Carlos Fletcher
Clark County Clerk

¹³See NRS 207.016(1).

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁵We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.