IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMONIC RONALDO MALONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39383

FILED

DEC 19 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF 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 January 8, 2001, the district court convicted appellant, pursuant to a guilty plea, of battery with intent to commit a crime. The district court sentenced appellant to serve a term of thirty to ninety months in the Nevada State Prison. The district court suspended the sentence and placed appellant on probation for an indeterminate period not to exceed three years, subject to certain conditions. No direct appeal was taken. On June 14, 2001, appellant's probation was revoked and the original sentence reinstated.

On November 19, 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.

First, appellant claimed that his plea was not made knowingly and voluntarily because it was coerced, because the offense to which he

pleaded guilty was "unsubstantiated," and that the information was based on falsehoods provided by the victim. 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] Appellant was originally charged with first degree kidnapping with the use of a deadly weapon, two counts of sexual assault with the use of a deadly weapon, and battery with intent to commit a crime. Pursuant to plea negotiations, the State agreed to not to oppose dismissal of the kidnapping and sexual assault charges in exchange for appellant pleading guilty to battery with intent to commit a crime and dismissal of the charges in district court case number OOF18563X. Appellant signed a written plea agreement. During the plea canvass appellant's counsel informed the district court that the plea was fictitious. Appellant stated that his plea was freely and voluntarily given, and that he had read, understood and signed the plea agreement. The district court then asked appellant the following:

> It's my understanding that on or about March 11, 2000, you willfully, unlawfully and feloniously used force and violence upon the person of [the victim], with intent to commit grand larceny by hitting and kicking [the victim] about the head and body with the hands, feet and by wrapping a telephone cord tightly around her neck, pushing her to a pillow – pushing a pillow against her face during the commission of a grand larceny; is that correct?

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

[2]Id.

To which appellant answered, "Yes, sir."[3] 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.[4]

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.[5] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing, J.

Leavitt, J.

Becker, J.

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Domonic Ronaldo Malone
Clark County Clerk

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[3]See Lundy v. Warden, 89 Nev. 419, 422, 514 P.2d 212, 213 (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.").

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

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