IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERMAN BLOCK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39389

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 29, 2001, the district court convicted appellant, pursuant to an Alford[1] plea, of sexual assault and lewdness with a child under the age of fourteen. The district court sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with a minimum parole eligibility of one hundred and twenty months. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.[2]

On October 4, 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 January 15, 2002, the district court denied appellant's petition. This appeal followed.

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

[2]Block v. State, Docket No. 38601 (Order Dismissing Appeal, October 30, 2001).

In his petition, appellant claimed that his plea was unknowingly and involuntarily entered. Specifically, appellant argued that: (1) his plea was coerced; (2) he did not understand what he was pleading guilty to; (3) the facts did not support the charges; and (4) he was told he would be given probation if he entered a guilty plea. A guilty plea is presumptively valid, and the appellant bears the burden of establishing it was not.[3] Absent an abuse of discretion, this court will not reverse a district court's decision on the validity of a guilty plea.[4] Appellant entered an Alford plea and was therefore not required to make a factual admission when pleading guilty.[5] 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.[6]

Appellant signed a written plea agreement which thoroughly stated the consequences of the plea, including the fact that appellant entered a conditional plea in exchange for two concurrent terms of life with a minimum parole eligibility after ten years. The plea agreement included statements that appellant would not be eligible for probation for the offense of sexual assault, and that appellant would have to be certified as not being a menace to the heath, safety or morals of others before he

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[3]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)).

[4]Id.

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

[6]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).

would be eligible for probation for the offense of lewdness with a child under the age of fourteen. The plea agreement also included statements that appellant understood that the State would be required to prove each element of every charge listed in the attached amended information, that he believed the plea agreement was in his best interest, and that the plea was entered voluntarily without duress, coercion or any promises of leniency. The district court conducted a plea canvass during which appellant stated that he had read the plea agreement, understood it, and that the plea was made freely and voluntarily after having given the matter considerable thought.[7] The State recited the facts that would have been presented had the case gone to trial.

Appellant was originally charged with four counts of lewdness with a child under the age of fourteen years, and eleven counts of sexual assault of a minor under fourteen years of age. Appellant stated to the district court that one of the reasons he was entering an Alford plea was to limit his exposure to prison time. After conducting the plea canvass, the district court further inquired:

> THE COURT: You seem somewhat reluctant today, Mr. Block, and I certainly do not want you to think that you're being pushed or forced into entering a plea. We want to make sure that this is your decision, not somebody else's decision, so let me ask you one more time if this is what you want to do.
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> APPELLANT: Yes, ma'am, I do.

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[7]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.").

THE COURT: You do not want to go to trial?

APPELLANT: No.

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.[8]

Appellant also raised two claims of ineffective assistance of counsel. 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, and that the deficient performance prejudiced the defense.[9] When the conviction is the result of a guilty plea, in order to show prejudice 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.[10] This court need not consider both prongs of the test if the petitioner makes an insufficient showing on either prong.[11]

First, appellant claimed that counsel was ineffective for not informing him of the length of the sentence if he pleaded guilty. As discussed, appellant was informed regarding the sentence. Therefore,

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[8]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).

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

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

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

appellant failed to demonstrate that counsel was ineffective in this regard, and the district court did not err in denying this claim.

Next, appellant claimed that counsel was ineffective for failing to prepare for trial. This claim was unsupported by any specific factual allegations that would, if true, entitle appellant to relief.[12] Therefore, appellant failed to demonstrate that counsel was ineffective in this regard, and 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.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing, J.
Shearing

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Sherman Block
Clark County Clerk

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

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