IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD CRAIG HENNAN,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON, CRAIG FARWELL,
Respondent.

No. 39542

FILED

JAN 31 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court order denying appellant Donald Craig Hennan's post-conviction petition for a writ of habeas corpus and motion to withdraw his guilty plea.

On July 2, 1999, Hennan was convicted, pursuant to a guilty plea, of one count each of sexual assault on a child under the age of 16 years and lewdness with a child under the age of 14 years. The district court sentenced Hennan to serve a prison term of life with parole eligibility in 20 years for the sexual assault count and a consecutive prison term of life with parole eligibility in 10 years for the lewdness count. Hennan appealed, and this court affirmed his conviction.[1] The remittitur issued on May 9, 2000.

On May 3, 2001, Hennan filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel to represent Hennan, and counsel supplemented the petition. On January 31, 2002, Hennan filed a proper person motion to withdraw his guilty plea. The

[1]Hennan v. State, Docket No. 34623 (Order Dismissing Appeal, April 12, 2000).

03-01719

State opposed the motion. After conducting an evidentiary hearing, the district court orally denied Hennan's petition. On April 23, 2002, the district court entered a written order denying Hennan's petition and motion. This appeal followed.

In his habeas petition, Hennan alleged several instances of ineffective assistance of counsel. In order to state a claim of ineffective assistance of counsel sufficient 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.[2] A petitioner must also demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.[3]

First, Hennan claimed that his trial counsel was ineffective in failing to request a formal competency hearing, pursuant to NRS 178.415(2),[4] and in allowing Hennan to enter a guilty plea when he was

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[2]Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

[3]Hill, 474 U.S. at 59.

[4]NRS 178.415(2) provides:

> At a hearing in open court, the judge shall receive the report of the examination and shall permit counsel for both sides to examine the person or persons appointed to examine the defendant. The prosecuting attorney and the defendant may introduce other evidence and cross-examine one another's witnesses.

not competent to do so.[5] In support of his claim, Hennan noted that at the time of the plea canvass he was taking two psychotropic medications, Trazadone and Prozac, and had previously been committed to Lake's Crossing. We conclude that the district court did not err in rejecting Hennan's claim.

The district court found that trial counsel was not ineffective in failing to request a competency hearing or in allowing Hennan to enter a guilty plea because there was no reasonable doubt about Hennan's competence to enter a valid plea.[6] That finding is supported by substantial evidence.[7] In particular, the district court relied on two reports submitted by Lake's Crossing doctors in deeming Hennan competent to stand trial and able to assist counsel in his defense. Additionally, the transcripts of Hennan's entry of plea and sentencing hearing reflect that he had the ability to consult with his lawyer and had a

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[5]In a related argument, Hennan claimed that the district court violated his due process rights in declaring him competent to plead guilty without conducting a hearing. We need not address Hennan's claim because it falls beyond the scope of a claim that can be raised in a post-conviction petition for a writ of habeas corpus, and Hennan failed to demonstrate good cause for not raising it earlier. See NRS 34.810(1)(a), (b)(2).

[6]See NRS 178.405; Bishop v. Warden, 94 Nev. 410, 411, 581 P.2d 4, 5 (1978) (holding that district court not required to follow procedures set forth in NRS 178.415 when there is no doubt as to the defendant's competency); see also Riker v. State, 111 Nev. 1316, 1325, 905 P.2d 706, 711 (1995) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)) (A defendant is competent if he has sufficient "'ability to consult with his lawyer with a reasonable degree of rational understanding' and a 'rational as well as factual understanding of the proceedings against him.'").

[7]See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

rational and factual understanding of the proceedings against him. Indeed, at the sentencing hearing, Hennan eloquently addressed the court, apologizing for his conduct and describing the pain he had caused to his friends and family. The coherent nature of Hennan's statements on the record belies his claim that he was incompetent to plead guilty. Accordingly, trial counsel was not ineffective for failing to challenge Hennan's competency.

Second, Hennan claimed that his trial counsel was ineffective at sentencing by failing to argue for probation for the lewdness count and by failing to present evidence that Hennan was involved in the community in coaching sports and in Cub Scouts. With regard to eligibility for probation, Hennan noted that his trial counsel allowed him to sign a plea agreement stating Hennan was not eligible for probation and failed to object to both the prosecutor's and the district court's comments at the sentencing hearing that Hennan's offenses were nonprobational.[8] We conclude that the district court did not err in rejecting Hennan's claims.

The district court found that trial counsel was not ineffective with regard to sentencing because Hennan was not prejudiced by the allegedly deficient conduct. That finding is supported by substantial

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[8]Although Hennan was ineligible for probation on the sexual assault count, he was eligible for probation on the lewdness count. See NRS 176A.100(1)(a); NRS 176A.410; NRS 176.133(3)(j). In a related argument, in the habeas petition and in the motion to withdraw his guilty plea, Hennan claimed that his guilty plea was not knowing and voluntary because he was not advised that he was eligible for probation on the lewdness count. We reject Hennan's contention. Unlike ineligibility for probation, eligibility for probation is not a direct consequence of a guilty plea of which a defendant must be advised. See Little v. Warden, 117 Nev. ___, 34 P.3d 540 (2001).

evidence.[9] In particular, trial counsel Kenneth Ward testified at the post-conviction hearing that if he had known probation was a sentencing option he would not have requested it because, in light of the nature of the charged crimes, he believed such a request would have negatively affected Hennan's credibility. Further, Ward testified that the recommendation of the Division of Parole and Probation was favorable, and he had discussed it with Hennan and they both believed it was the best sentence that Hennan could expect.[10] Finally, at the post-conviction hearing, the district court found that, even assuming the additional evidence would have been presented and probation would have been requested, it would not have imposed a lesser sentence. Accordingly, Hennan failed to show he was prejudiced by his trial counsel's allegedly deficient conduct at sentencing.

Finally, Hennan claimed that his trial counsel was ineffective in failing to inform Hennan that he would have to be certified by a psychological panel before he was eligible for parole on the sexual assault count.[11] The certification requirement concerns eligibility for parole and

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[9]See Riley, 110 Nev. at 647, 878 P.2d at 278.

[10]Despite Hennan's request that the district court impose the lesser sentences recommended by the Division of Parole and Probation, the district court imposed the maximum sentences possible, explaining that he had considered the impact Hennan's acts had on the young victims and their families.

[11]In a supplemental petition, Hennan also claimed that Ward misinformed him about parole by advising him that he would be entitled to parole in 10 years as a matter of right. Hennan, however, failed to substantiate that claim at the evidentiary hearing and, therefore, the district court did not err in rejecting it.

is, therefore, a collateral consequence of a guilty plea.[12] This court has held that trial counsel is not ineffective for failing to inform a defendant of a collateral consequence of a guilty plea.[13] Accordingly, Hennan's trial counsel was not ineffective in failing to advise Hennan about the certification requirement.

In addition to alleging ineffective assistance of trial counsel, Hennan claimed in the habeas petition and in the motion to withdraw his guilty plea that the plea was not knowing and voluntary because: (1) he did not understand the nature of the charges against him and the consequences of his guilty plea; and (2) his counsel coerced him into pleading guilty. Hennan's claims with respect to the validity of his guilty plea are belied by the record.[14]

At the plea canvass, Hennan represented to the district court that he was satisfied with the legal services rendered by Ward, and that he had not been made any promises or threatened in order to induce him to plead guilty. In exchange for his plea bargain, Hennan received a substantial benefit; namely, the State agreed to drop two similar counts involving sexual assault on a minor. Finally, our review of the signed plea agreement and transcript of the plea canvass indicates that Hennan's guilty plea was knowing, voluntary, and intelligent; he was advised of the direct consequences of his criminal conviction, the elements of the offenses charged, and the constitutional rights he was waiving by pleading guilty.

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[12]See Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970); Mathis v. Warden, 86 Nev. 439, 471 P.2d 233 (1970).

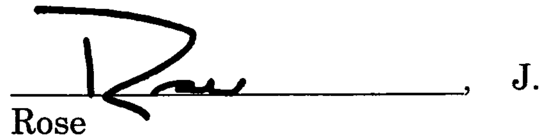
[13]See Nollette v. State, 118 Nev. ___, 46 P.3d 87 (2002).

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

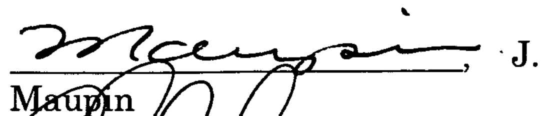
Accordingly, the district court did not err in rejecting Hennan's claims that his guilty plea was not knowing and voluntary.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hennan is not entitled to relief and that briefing and oral argument are not warranted.[15] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[16]



_______________, J.
Rose



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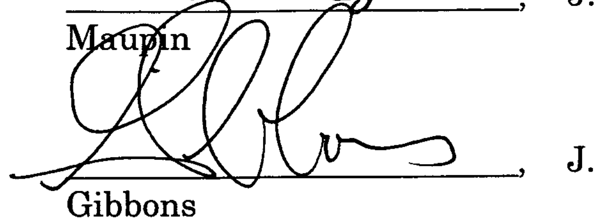

_______________, J.
Gibbons

cc: Hon. David A. Huff, District Judge
Donald Craig Hennan
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk

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

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