IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL CASEY FENIMORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39671

FILED

FEB 05 2003

CLERK OF SUPREME COURT
J. Richards
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

Appellant Michael Casey Fenimore pleaded guilty and was convicted of one count of lewdness with a child under the age of fourteen years. He received a sentence of life in prison with the possibility of parole after serving a minimum of ten years. Fenimore asserts that his trial counsel was ineffective[1] in misleading him to believe that he would receive a suspended sentence and probation or would serve at most two years in prison. Before agreeing to plead guilty, Fenimore faced two counts of sexual assault and three counts of lewdness with a child under fourteen. He was eighteen years old when he committed the offense against a thirteen-year-old girl and when he pleaded guilty.

The district court held an evidentiary hearing and took testimony from Fenimore, his mother, his grandmother, his great aunt, and his trial counsel, Bruce Lindsay. The court found that Fenimore's claim was not supported by credible evidence. Its order stated in part:

[1]See Strickland v. Washington, 466 U.S. 668 (1984).

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> The record reveals and the credible testimony of Mr. Lindsay established that Fenimore was fully aware of the terms of the plea bargain—that the defense could not even explicitly request probation. The record reveals that Fenimore acknowledged at the plea hearing that he should plead guilty fully expecting to be denied probation. The court finds that he enjoyed no great expectation of a lenient sentence. The court further finds that a subjective expectation of leniency, not brought about by the State or the court, is not grounds to invalidate an otherwise proper guilty plea. Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).
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> Fenimore pleaded guilty with full knowledge of the available sentences and with full knowledge that the likelihood of probation was slight. Fenimore's mother may have seized on the slight chance of probation and held out great hopes for leniency. However, Fenimore himself suffered from no delusions.
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> . . .
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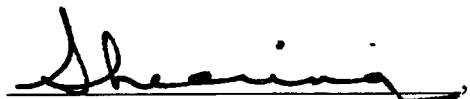
> [B]y the time he pleaded guilty [Fenimore] was fully aware that he faced imprisonment for at least ten years. Accordingly, the court finds that Lindsay did not misrepresent the date upon which Fenimore would be eligible for parole and thus was not ineffective. See Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985).

We conclude that the record and relevant legal authority support the district court's order. Fenimore asserts that the court "abused its discretion in not finding that four witnesses outweighed the testimony of one witness." He cites no authority for this proposition. A district court is in the best position to judge the credibility of those who appear at

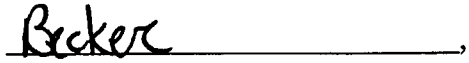
proceedings before it.[2] Moreover, the record as a whole, not just Lindsay's testimony, supports the district court's decision. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Shearing

_____, J.
Leavitt



_____, J.
Becker

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[2]See Mann v. State, 118 Nev. ___, ___, 46 P.3d 1228, 1231 (2002); Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996) (deferring to the district court's decision, noting that "[t]he cold record is a poor substitute for demeanor observation").