IN THE SUPREME COURT OF THE STATE OF NEVADA

JOVIE EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39699

FILED

MAR 13 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant Jovie Edwards' post-conviction petition for a writ of habeas corpus.

On July 19, 2001, Edwards was convicted, pursuant to a guilty plea, of robbery with the use of a deadly weapon (count I) and second-degree kidnapping (count II).[1] The district court sentenced Edwards to serve two consecutive prison terms of 36 to 90 months for count I and a concurrent prison term of 72 to 180 months for count II. Edwards did not file a direct appeal.

On March 5, 2002, Edwards 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 NRS 34.770, the district court declined to appoint counsel or to conduct an evidentiary hearing. On May 29, 2002, the district court denied Edwards' petition. Edwards filed the instant appeal.

[1]Edwards entered a guilty plea to counts I and II, except that he pleaded nolo contendere to the deadly weapon enhancement.

03-04280

In the petition, Edwards raised numerous claims with regard to the validity of his guilty plea. In order to withdraw a guilty plea, a petitioner has the burden of showing that the guilty plea was not entered knowingly and intelligently.[2] To determine if a plea is valid, the district court must consider the entire record and the totality of the facts and circumstances of a case.[3] "On appeal from the district court's determination [regarding the validity of a plea], we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion."[4]

First, Edwards contended that his guilty plea was not knowing and voluntary because he pleaded nolo contendere to the deadly weapon enhancement based on an "off the record" promise from his trial counsel that he would not be punished for the enhancement. The district court did not err in rejecting Edwards' contention because it was belied by the record.[5]

At the plea canvass, the district court expressly advised Edwards that he would be serving prison time on the deadly weapon enhancement stating: "[d]o you understand sir, that you're looking at two to fifteen years in prison plus an additional two to fifteen years in prison for the deadly weapon enhancment." Edwards responded affirmatively.

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

[3]Id. at 271-72, 721 P.2d at 367.

[4]Id. at 272, 721 P.2d at 368.

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

Moreover, the signed plea agreement set forth a stipulated sentence of 36 to 90 months for the deadly weapon enhancement. Therefore, the record belies Edwards' claim that he believed, by entering a nolo contendere plea, he would not be sentenced on the deadly weapon enhancement. Even assuming Edwards had such a belief, this court has held that the "'mere subjective belief of a defendant as to potential sentence . . . unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing.'"[6] Accordingly, the district court did not err in rejecting Edwards' claim.

Second, Edwards contended that his guilty plea was not knowing and voluntary because he believed he was pleading guilty solely to the crime of aiding and abetting for driving the getaway car and, therefore, did not understand the elements of the crimes of robbery with the use of a deadly weapon and second-degree kidnapping. We conclude that the district court did not err in rejecting Edwards' contention because it was belied by the record.[7]

At the plea canvass, Edwards pleaded guilty to the crimes of robbery and second-degree kidnapping and nolo contendere to the deadly weapon enhancement, advised the district court that he understood the nature of the charges to which he was pleading guilty and nolo contendere, and waived a formal reading of those charges. Additionally, Edwards admitted the facts supporting the elements of the charged offenses, which were set forth in the information attached as an exhibit to the signed plea

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[6]State v. Langarica, 107 Nev. 932, 934, 822 P.2d 1110, 1112 (1991) (quoting Rouse v. State, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975)).

[7]See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

agreement. Accordingly, the district court did not err in rejecting Edwards' claim that he pleaded guilty and nolo contendere without knowledge of the elements of the crimes.

Third, Edwards contended that the district court committed "plain error" in failing to: (1) advise Edwards of his waiver of constitutional rights; (2) inform him of the elements of the charged offenses; (3) make an express finding as to whether Edwards' guilty plea was knowingly and voluntarily entered; and (4) conduct an evidentiary hearing to determine if Edwards was guilty of the crime charged.[8] The district court did not err in rejecting Edwards' contentions.

In the signed plea agreement, Edwards was advised of the constitutional rights he was waiving by entry of his plea. Additionally, as discussed above, Edwards was aware of the elements of the charged offenses prior to pleading guilty. Further, at the plea canvass, the district court made an express finding that Edwards' plea was knowing and voluntary and that he understood both the nature of the charged offenses and the consequences of the guilty plea. Finally, there was no need for the district court to conduct an evidentiary hearing on the issue of Edwards' guilt because he admitted to the charged offenses at the plea canvass and represented to the district court that he was pleading guilty freely and voluntarily. Accordingly, the district court did not err in rejecting

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[8]Edwards also contended that the district court committed "'plain error,' by allowing Edwards to plead guilty to two . . . independent guilty pleas at a single canvassing hearing." The district court did not err in rejecting that contention. The district court may accept multiple guilty pleas at a single canvassing hearing.

Edwards' contention that the district court committed "plain error" at the plea canvass.

Fourth, Edwards contended that his nolo contendere plea to the deadly weapon enhancement was invalid because there was no factual basis for the plea. We conclude that the district court did not err in rejecting Edwards' contention.

The transcript of the plea canvass reveals that the district court sufficiently determined the factual basis for the plea and resolved the conflict between Edwards' entry of a nolo contendere plea and his claim of innocence.[9] Particularly, at Edwards' plea canvass, the State recited the factual basis for the nolo contendere plea to the deadly weapon enhancement: that the facts would show that Edwards, along with other unknown co-conspirators, robbed the victim with the use of a gun, threatening to kill the victim if he did not cooperate.[10] Moreover, the record of the plea canvass, as well as the guilty plea agreement, reveals that Edwards entered the plea agreement because he believed it was in his best interest. In particular, in exchange for Edwards' nolo contendere plea, the State dropped several counts alleged in the original information and agreed to a stipulated sentence, which was imposed by the district court. Accordingly, the district court did not err in finding that there was a factual basis for Edwards' nolo contendere plea.

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[9]See State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706-07 (1996).

[10]See Bryant, 102 Nev. at 271, 721 P.2d at 367 (defendant may adopt factual statement of guilt made by judge or prosecutor).

Fifth, Edwards contended that his nolo contendere plea was invalid because: (1) nolo contendere pleas are unconstitutional; and (2) it was improper to allow Edwards to plead guilty to the underlying crime of robbery and nolo contendere to the deadly weapon enhancement. We conclude that the district court did not err in rejecting Edwards' contentions. This court has previously held that nolo contendere pleas are constitutional if "knowingly entered for a valid reason."[11] Further, the district court is authorized by statute to accept a defendant's nolo contendere plea, and entry of such a plea allows the district court to treat the defendant as if he were guilty.[12] As discussed above, there was a factual basis for Edwards' nolo contendere plea and it was entered for a valid reason. Accordingly, the district court did not err in rejecting Edwards' claim that his nolo contendere plea was unconstitutional and invalid.

In the petition, Edwards also contended that his trial counsel was ineffective in failing to: (1) file a presentence motion to withdraw the guilty plea that adequately alleged that Edwards' guilty plea was not knowing and intelligent; and (2) investigate and present exculpatory evidence. We conclude the district court did not err in rejecting Edwards' claims.[13] Even assuming trial counsel acted deficiently with regard to the presentence motion to withdraw the guilty plea, Edwards failed to

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[11]See Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982).

[12]See NRS 174.035(1); Gomes, 112 Nev. at 1479, 930 P.2d at 706.

[13]See Strickland v. Washington, 466 U.S. 668 (1984) (establishing a two-prong test for ineffective assistance of counsel claims requiring the defendant to establish that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance).

demonstrate he was prejudiced by the deficient conduct because his guilty plea was knowing, voluntary, and intelligent.[14] Additionally, Edwards' claim with regard to trial counsel's inadequate investigation failed for lack of specificity because Edwards did not identify the exculpatory or mitigating evidence trial counsel could have uncovered with further investigation.[15] Accordingly, the district court did not err in rejecting Edwards' claims that his trial counsel was ineffective.

In his petition, Edwards also contended that he was deprived of his right to a direct appeal because neither "[t]rial counsel nor the judge advised [him that he] had a right to appeal [the] judgment of conviction." We conclude that this claim lacked merit.

"[T]here is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.[16] The burden is on the defendant to indicate to his attorney that he wishes to pursue an appeal.[17] Here, Edwards does not allege that he asked trial counsel to file a direct appeal and nothing in the record suggests that a

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[14]See Bryant, 102 Nev. at 272, 721 P.2d at 368 (recognizing that, in a motion to withdraw a guilty plea, the defendant has the burden of showing that the guilty plea was not entered knowingly and intelligently; see also Nollette v. State, 118 Nev. ___, 46 P. 3d 87 (2002) (holding that trial counsel is not ineffective with regard to the guilty plea where record reveals that plea was knowing and intelligent).

[15]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

[16]See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

[17]See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

direct appeal in Edwards' case had a reasonable likelihood of success. Therefore, Edwards' claim lacked merit.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Edwards is not entitled to relief and that briefing and oral argument are not warranted.[18] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing, J.
Shearing

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. John S. McGroarty, District Judge
Jovie Edwards
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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