

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIMMY EARL DOWNS A/K/A JIMMIE
EARL DOWNS A/K/A JAMES
ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39757

FILED

APR 10 2003

ORDER OF AFFIRMANCE

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

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 June 28, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of forgery. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole. On October 9, 2000, the district court entered an amended judgment of conviction, providing appellant with six hundred and fifty-four days of credit for presentence incarceration. This court affirmed appellant's conviction on direct appeal.¹

On January 18, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Appellant filed a supplement to the petition. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined

¹Downs v. State, Docket No. 36503 (Order of Affirmance, July 12, 2001).

to appoint counsel to represent appellant or to conduct an evidentiary hearing. On June 4, 2002, the district court denied appellant's petitions. This appeal followed.

Appellant raised two claims that his guilty plea was not entered knowingly and voluntarily. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.² Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.³ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁴

Appellant first contended that his guilty plea was not knowingly and voluntarily entered because he was not informed on the face of the guilty plea agreement or during the plea canvass of the potential penalties for habitual criminal adjudication. Specifically, he stated that he was not informed that he faced a potential sentence of life in the Nevada State Prison with the possibility of parole after ten years. He further stated that he was not informed that his offense was not probationable. He asserted that because he was informed that he faced potential sentences of one to four years in each case that he believed that his maximum exposure was eight years.

²Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

³Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

⁴State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

Based upon our review of the entire record on appeal, we conclude that appellant failed to carry his burden of demonstrating that his plea was unknowing or involuntary. Although the guilty plea canvass and the written guilty plea agreement did not specifically set forth the potential penalties appellant faced if he was adjudicated a habitual criminal, the totality of the circumstances present in the record on appeal reveal that appellant's guilty plea was entered with an understanding of the potential penalties that he faced if he was adjudicated a habitual criminal. Appellant was informed in both the written guilty plea agreement and at the guilty plea canvass that the State was seeking to adjudicate appellant a habitual criminal. On October 15, 1998, a notice and motion to amend the information was filed in the district court. The motion to amend the information clearly set forth the State's intention to seek habitual criminal adjudication and the potential penalties appellant faced if he was adjudicated a habitual criminal.⁵ At several pretrial hearings, representations were made that the State was seeking large habitual criminal treatment. During a Faretta⁶ canvass conducted in the instant case, appellant was canvassed regarding his understanding that the State was seeking large habitual criminal treatment and that he faced a potential penalty of life in the Nevada State Prison without the possibility of parole. Appellant affirmatively indicated that he understood these facts and elaborated that he believed that the State was seeking "to put [him] away for the rest of [his] life." Appellant indicated that he might

⁵On October 22, 1998, the district court granted the State's motion to amend the information.

⁶Faretta v. California, 422 U.S. 806 (1975).

seek to file a motion to dismiss the habitual criminal allegation. Appellant's trial counsel attached a certificate to the written guilty plea agreement that she had explained all of the potential penalties appellant faced by entry of his plea. Appellant's claim that he understood the State's right to argue for habitual criminal treatment to mean that he would only receive consecutive sentences between the counts is not supported by a review of the entire record on appeal.⁷ The record reveals that appellant affirmatively understood that he would be serving prison time and that probation was not available.⁸ Thus, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his plea was not knowing and voluntary because he was not informed that he would be not credited in this case for time spent incarcerated after sentencing and entry of the judgment of conviction in district court case number C151063. Appellant failed to carry his burden of demonstrating that his plea was involuntary or unknowing. Appellant failed to demonstrate that he was entitled to this credit as a matter of law and that knowledge that this credit would not be applied would have altered his decision to enter a guilty plea in the instant case.⁹ Thus, we conclude that the district court did not err in denying this claim.¹⁰

⁷See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁸See Little v. Warden, 117 Nev. 845, 34 P.3d 540 (2001).

⁹See NRS 176.055(1) (providing that a defendant may receive credit for time served "unless his confinement was pursuant to a judgment of conviction for another offense.").

¹⁰To the extent that appellant argued that his appellate counsel was ineffective for failing to raise this issue on direct appeal, appellant failed
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Next, appellant claimed that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that there is a reasonable probability that the result of the proceeding would have been different but for counsel's errors.¹¹ The court need not consider both prongs of the Strickland test if the petitioner makes an insufficient showing on either prong.¹²

Appellant claimed that his trial counsel was ineffective for stipulating that appellant had a sufficient number of prior convictions to qualify him for large habitual criminal treatment. Appellant claimed that his trial counsel should have instead objected to the State's failure to prove that the prior convictions were valid and were in fact appellant's prior convictions. We conclude that appellant failed to demonstrate that his trial counsel was ineffective for stipulating to the fact that appellant had the requisite number of qualifying prior convictions for large habitual criminal treatment.¹³ Several months earlier, in another case, district

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to demonstrate, for the reasons discussed above, that this issue had a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

¹¹Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

¹²Strickland, 466 U.S. at 697.

¹³NRS 207.010(1)(b) (providing that a person convicted of any felony, "who has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of

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court case number C151063, the State sought large habitual criminal treatment of appellant.¹⁴ In that case, the State presented four prior judgments of conviction for the court's consideration in adjudicating appellant a habitual criminal in that case.¹⁵ The State further, painstakingly, demonstrated that each conviction belonged to appellant, qualified as a prior felony conviction and was constitutionally valid on its face. In fact, appellant admitted that the prior convictions were his, but explained the circumstances surrounding those convictions. Appellant's trial counsel in the instant case was present for the State's presentation in district court case number C151063. In the instant case, the State represented to the district court that it was relying upon the judgments of conviction previously submitted. Because appellant had a sufficient number of qualifying prior felony convictions for large habitual criminal treatment, appellant cannot demonstrate that his counsel was ineffective for stipulating that he had a sufficient number of convictions and for

. . . continued

this state would amount to a felony" is eligible for large habitual criminal treatment.).

¹⁴The record on appeal in Docket No. 40247, an appeal pending in this court, contains the sentencing transcripts and sentencing exhibits for district court case number C151063. We take judicial notice of the documents contained in the record on appeal filed in this court in Docket No. 40247.

¹⁵The prior judgments of conviction considered in that case involved: (1) a 1996 Nevada conviction for possession of a stolen vehicle, (2) a 1991 Arizona conviction for forgery of a credit card, (3) a 1989 California conviction for receiving stolen property, and (4) a 1987 California conviction for burglary.

failing to object to the prior convictions. Thus, we conclude that the district court did not err in denying this claim.

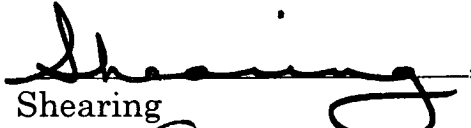
Finally, appellant claimed that the district court abused its discretion in adjudicating him a habitual criminal because: (1) the prior convictions were stale and non-violent, (2) the prior convictions were constitutionally infirm on their face, (3) the State failed to prove his identity and the validity of the prior convictions, (4) the district court failed to make findings regarding the validity of the prior convictions, (5) the district court considered improper prior convictions, (6) an insufficient number of prior convictions was presented, and (7) the district court failed to weight factors for and against habitual criminal adjudication. This court considered and rejected appellant's argument on direct appeal that the district court abused its discretion in adjudicating appellant a habitual criminal. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and precisely focused argument.¹⁶ To the extent that appellant claimed that his appellate counsel was ineffective in how she presented this argument on direct appeal and in failing to file a petition for rehearing, we conclude that appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced.¹⁷ Thus, the district court did not err in denying this claim.

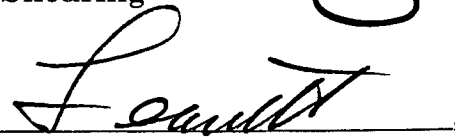
¹⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).


¹⁷See Kirksey, 112 Nev. 980, 923 P.2d 1102.

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.¹⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁹

 J.
Shearing

 J.
Leavitt

 J.
Becker

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

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

¹⁹We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.