

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL E. HUMBLE,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
DAVID MELIGAN,
Respondent.

No. 39871

FILED

JAN 27 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Paul E. Humble's post-conviction petition for a writ of habeas corpus. In 1996, the district court convicted Humble, pursuant to a guilty plea under Alford,¹ of one count of sexual assault and sentenced him to a term of life in prison with the possibility of parole after five years. This court dismissed Humble's direct appeal, which challenged the district court's order denying his presentence motion to withdraw his guilty plea.² Humble filed a timely post-conviction petition for a writ of habeas corpus and two supplemental petitions. The district court conducted an evidentiary hearing and dismissed Humble's petition in May 2002.

Humble argues that his plea was involuntary due to ineffective assistance by his fifth attorney during the proceedings that led to his plea and conviction. He claims that his counsel was not prepared to proceed to trial, evidenced by counsel's unsuccessful motion for a continuance, forcing Humble to enter the Alford plea. Humble made a

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

²See Humble v. State, Docket No. 28724 (Order Dismissing Appeal, October 28, 1998).

similar argument on direct appeal. He claimed that the district court erred in denying his motion to continue the trial and that this denial forced his counsel to coerce him into pleading guilty. This court concluded that the record showed that Humble's plea was knowing and voluntary.³ We now conclude, after the evidentiary hearing on Humble's instant petition, that the district court did not err in determining that Humble's counsel was not ineffective and in dismissing the petition.

A claim of ineffective assistance of counsel presents a mixed question of law and fact, subject to independent review.⁴ To establish ineffective assistance of counsel, a claimant must demonstrate that counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the claimant would not have pleaded guilty.⁵ Moreover, a guilty plea is presumptively valid, and an appellant has the burden to establish that the plea was not knowing and intelligent.⁶

At the evidentiary hearing, counsel stated that in preparation for trial he had reviewed Humble's file, which included police reports, witness statements, and the preliminary hearing transcripts. He also prepared and filed the motion to continue as well as eight or nine pretrial motions, including a lengthy motion in limine. He prepared various subpoena duces tecums. He personally interviewed various witnesses and subpoenaed them as well. Lastly, he had a medical expert prepared to testify at trial. Although Humble stated at the evidentiary hearing that

³See id.

⁴Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).


⁵Id. at 987-88, 923 P.2d at 1107.

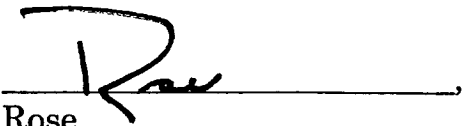
⁶See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

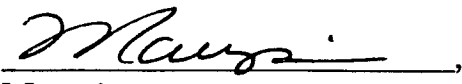
he felt that he had no choice but to enter an Alford plea because his motions had been denied and his attorney had no desire to defend him, he also admitted that he entered the plea because, after speaking with his family and his investigator, he determined it was in his best interest to avoid the possibility of being convicted of the other offenses originally charged and the possibility of a harsher penalty.

It is evident from the record before us that Humble's counsel was prepared to go to trial despite the district court's denial of his motion to continue the trial date and that he did not coerce Humble to enter an Alford plea. Therefore, Humble failed to demonstrate that his counsel's actions fell below an objective standard of reasonableness or that, absent them, he would not have pleaded guilty. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Archie E. Blake, District Judge
Rick Lawton
Attorney General Brian Sandoval/Carson City
Lyon County District Attorney
Lyon County Clerk