

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY T. HURD-SAMUELS, A/K/A
ANTHONY T. HURDSAMUELS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40095

FILED

JAN 08 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of the district court denying a petition for a post-conviction writ of habeas corpus. Appellant Anthony T. Hurd-Samuels pleaded guilty to one count of first degree murder and one count of sexual assault. The district court sentenced Hurd-Samuels to life in prison with the possibility of parole after ten years for the murder charge and a consecutive life term with the possibility of parole after five years for the sexual assault charge. On appeal, Hurd-Samuels contends that he received ineffective assistance of counsel and therefore his guilty pleas should be invalidated. We disagree.

To prevail on an ineffective assistance of counsel claim, "[a] convicted defendant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result of counsel's performance."¹

Hurd-Samuels' attorney, William (Lew) Wolfbrandt, was prepared to go to trial and not negotiate a settlement because he thought

¹Riley v. State, 110 Nev. 638, 646, 878 P.2d 272, 277-78 (1994) (citing Strickland v. Washington, 466 U.S. 668, 687-88, 692 (1984)).

the case was defensible. Wolfbrandt employed a private investigator to assist him to prepare for trial. Wolfbrandt prepared to pick a jury and had a theory of defense. Wolfbrandt also had witnesses scheduled. Unexpectedly, one of the essential defense witnesses changed his story. At that time, Wolfbrandt considered alternatives to trial because he deemed the defense weak. Wolfbrandt strongly urged Hurd-Samuels to accept the guilty plea offer because, in his professional opinion, it would have been a mistake to take the case to trial. Wolfbrandt informed Hurd-Samuels that if the jury convicted him, he might not get the possibility of parole. Hurd-Samuels signed the written plea agreement.

Approximately two months after Hurd-Samuels entered his guilty pleas, he appeared with Wolfbrandt for sentencing. Hurd-Samuels adamantly told Wolfbrandt at that time he wanted to withdraw his guilty pleas. Wolfbrandt then made an oral motion to the district court to withdraw the guilty pleas.

The court entertained the motion and asked for a basis for the motion. Wolfbrandt explained that the pleas were involuntary and that Hurd-Samuels has maintained his innocence. The court noted there was no coercion and that it took "a great deal of time to make sure this is what he wanted to do," and denied the motion to withdraw the guilty pleas. Wolfbrandt appealed after the district court denied the motion. We conclude that Hurd-Samuels received reasonably effective assistance of counsel and was not prejudiced by counsel's performance.

In determining whether to allow a defendant to withdraw a guilty plea, we consider the guilty plea to be "presumptively valid and the burden should be on the defendant to establish that the plea was not

entered knowingly and intelligently."² We 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."³

In addition to accepting the written plea agreement, the district court verbally canvassed Hurd-Samuels thoroughly and completely. The district court asked Hurd-Samuels if he understood English; Hurd-Samuels answered yes. The court asked if he pleaded guilty or not guilty; Hurd-Samuels answered guilty. The court also asked if he received a copy of the guilty plea agreement; Hurd-Samuels answered yes. The district court further inquired if he read the agreement, if he understood the agreement, and if he reviewed the agreement with his attorney. Hurd-Samuels answered affirmatively. The court then asked Hurd-Samuels if he had any questions about the agreement or his case. Hurd-Samuels answered no.

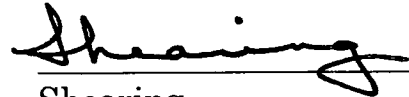
The district court continued to ask Hurd-Samuels questions and explain the consequences of his actions. The court ensured that Hurd-Samuels knew he might serve consecutive terms and that the court would determine sentencing. Hurd-Samuels stated he understood this. Throughout the entire canvassing, Hurd-Samuels stated that he understood what was going on and that no one was forcing him to take the plea agreement.


²Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing Wingfield v. State, 91 Nev. 336, 535 P.2d 1295 (1975)).


³Id. (citing Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980)).

Hurd-Samuels knowingly and intelligently entered his guilty plea and understood the consequences of it. Therefore, we conclude that the district court did not abuse its discretion in denying Hurd-Samuels' motion to withdraw his guilty pleas. Hurd-Samuels received reasonably effective assistance of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, C.J.
Shearing

 _____, J.
Becker

 _____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
David M. Schieck
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk