

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN STANDLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40171

FILED

FEB 05 2003

ORDER OF AFFIRMANCE

JANETTE H. BLOOM
CLERK OF SUPREME COURT
BY *Richard*
DEPUTY CLERK

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

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

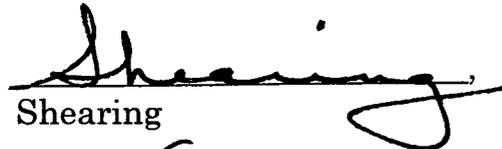
Appellant also claimed in his petition that his guilty plea was involuntarily entered. The district court concluded that the guilty plea was valid. "On appeal from the district court's determination, we will presume that the lower court correctly assessed the validity of the plea, and we will not reverse the lower court's determination absent a clear

¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

showing of an abuse of discretion."² Appellant has not demonstrated an abuse of discretion by the district court.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. James W. Hardesty, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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

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RONALD A. LONGTIN, JR.

BY [Signature]
DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

ALLEN STANDLEY,

Petitioner,

v.

Case No. CR99P1744

WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER,

Dept. No. 9

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This matter came before the court on Standley's
Petition for Writ of Habeas Corpus (Post-Conviction). An
evidentiary hearing has been conducted. The court, now being
fully advised of the premises, denies the relief requested.

FINDINGS OF FACT

1. In September of 1999, Standley was arrested and ultimately charged with a variety of felonies, including five counts of robbery with use of a deadly weapon and being an ex-felon in possession of a firearm.
2. Following the arrest, Standley was represented by Robert

1 Bell. Owing to his training and experience, Bell was qualified
2 and competent to undertake this representation.

3 3. After a preliminary hearing was conducted and an
4 arraignment, the parties entered into plea negotiations.

5 a. The plea bargain stipulated that, in exchange for
6 Standley's plea to two counts of robbery with use of a
7 deadly weapon, the State would dismiss or otherwise not
8 pursue the remaining charges and enhancements, but would be
9 free to argue for the appropriate sentence at the time of
10 sentencing.

11 b. On November 18, 1999, Bell sent Standley a letter
12 confirming the plea offer, and informed Standley that each
13 count of armed robbery "carry one to ten years, plus an
14 additional one to ten enhancement . . .".

15 c. On December 22, 1999, Bell sent Standley another letter
16 correcting the mistake he made respecting sentence in the
17 November 18 letter: "[t]he actual time you are facing on
18 each count is two to fifteen years . . .".

19 4. On January 5, 2000, Standley appeared in court, with Bell,
20 to enter his negotiated plea.

21 a. Before canvassing Standley and accepting the plea, the
22 court learned that no guilty plea memorandum had been filed
23 or reviewed by Standley. Accordingly, Standley's case was
24 trailed, and recalled after Standley had a sufficient
25 opportunity to go over the guilty plea memorandum and sign
26 it.

1 i. The guilty plea memorandum, in salient part,
2 recited the plea negotiations correctly, and fully
3 and accurately recited the consequences of the
4 plea.

5 ii. Given the recitals in the guilty plea memorandum,
6 Standley understood the range of punishments which
7 could be imposed.

8 b. Once Standley returned to court, following the recess,
9 he was sworn in and canvassed thoroughly. Standley
10 answered each question asked by the court correctly and
11 truthfully.

12 i. Standley understood the consequences of his plea.
13 He understood, specifically, the sentencing range
14 for each count, the deadly weapon enhancement, and
15 the possibility that all sentences could be
16 ordered to be served consecutively.

17 ii. Standley understood that sentencing was entirely
18 up to the court, and that the court was not bound
19 by any plea negotiations.

20 iii. Standley was not promised anything in order to
21 secure his plea. Standley's testimony, presented
22 at the habeas proceeding, in contrast to his sworn
23 testimony at the change of plea proceeding, is not
24 credible.

25 iv. Standley was not threatened in any way in order to
26 secure his plea. Standley's testimony presented

1 in the habeas proceeding, in contrast to his sworn
2 testimony at the change of plea proceeding is not
3 credible.

4 5. On February 11, 2000, Standley appeared in court, with Bell,
5 for sentencing.

6 a. Prior to the sentencing hearing, the Department of
7 Parole and Probation prepared a presentence report.

8 i. The department recommended the following sentences
9 for each count: "A maximum term of one hundred
10 eighty (180) months with a minimum parole
11 eligibility of sixty (60) months in the Nevada
12 Department of Prisons, consecutive to a like term
13 for the weapon enhancement for a maximum term of
14 one hundred eighty (180) months with a minimum
15 parole eligibility of sixty (60) months." The
16 sentences imposed in each case would run
17 consecutively.

18 ii. Standley received the report and went over it
19 before the sentencing hearing began.

20 iii. When the sentencing hearing was called, Standley
21 was asked if he had any corrections to report
22 respecting the contents of the presentence report.
23 Standley said no. Standley's response was
24 credible.

25 b. Prior to imposing sentence, the court asked Standley if
26 he had "anything . . . to say before sentence is

1 imposed . . .?" Standley said no. Standley's response
2 was credible.

3 6. Following the sentencing hearing, the court imposed the
4 sentence recommended by the Department of Parole and Probation.

5 7. Standley did not appeal from the judgment of conviction.

6 CONCLUSIONS OF LAW

7 1. Standley's plea was knowingly, voluntarily and intelligently
8 entered. Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

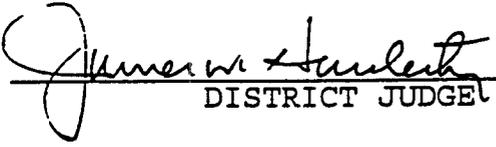
9 2. The letters written by Bell to Standley created a mere
10 subjective expectation or belief in Standley as to a potential
11 sentence or hope of leniency. Rouse v. State, 91 Nev. 677, 541
12 P.2d 643 (1975).

13 3. Standley received effective assistance of counsel within the
14 contemplation of Strickland v. Washington, 466 U.S. 668 (1984),
15 Hill v. Lockhart, 474 U.S. 52 (1985), and their local progeny.

16 JUDGMENT

17 It is therefore the order and judgment of this Court
18 that Standley's Petition of Writ of Habeas Corpus (Post-
19 Conviction) is hereby denied.

20 DATED this 9 day of August, 2002.

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22 
23 _____
24 DISTRICT JUDGE
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