IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS MEDLAR A/K/A ANTHONY DOUGLAS ZANITONI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40252

FILED

SEP 19 2003

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

ORDER OF AFFIRMANCE

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 May 18, 2001, the district court convicted appellant, pursuant to a guilty plea, of three counts of burglary. The district court sentenced appellant to serve three consecutive terms of forty-eight months to one hundred and twenty months in the Nevada State Prison. The district court suspended the sentences and placed appellant on probation for a term of five years. On March 22, 2002, the district court entered an order revoking appellant's probation and executing the original sentences. The district court further amended the judgment of conviction to include one hundred and fifty-two days of credit for time served. No appeal was taken.

On May 6, 2002, appellant 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 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On July 10, 2002, the district court denied appellant's petition. This appeal followed.

In his petition, appellant alleged that his guilty plea was entered unknowingly and involuntarily. A guilty plea is presumptively valid, and a defendant carries the burden of establishing that the plea was not entered knowingly and intelligently.[1] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[2]

First, appellant claimed that his plea was unknowingly entered because he was not aware that the information had been altered to include thirty additional addresses not listed in the criminal complaint filed in justice court. Appellant claimed that he would not have entered a guilty plea if he had known that the information listed thirty additional addresses. We conclude that appellant failed to establish that his plea was entered unknowingly. The information containing the additional addresses was attached to the written guilty plea agreement. Appellant signed the written guilty plea agreement and informed the district court that he had read and understood the contents of the written guilty plea agreement. The written guilty plea agreement informed appellant that a consequence of his guilty plea was that he admitted the facts supporting the elements of the offenses as set forth in the attached exhibit.[3] Appellant was further expressly informed that as a consequence of his

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

[2]See Hubbard, 110 Nev. at 675, 877 P. 2d at 521.

[3]Contrary to appellant's argument, appellant was not separately charged with an offense for each of the additional addresses contained in the information. Rather, these addresses were incorporated into the three original burglary counts.

guilty plea that he would have to pay restitution "for all cases and counts." Thus, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that he understood that he would only go to prison if he did not complete drug court or if he did "not follow through with the deal." Appellant appeared to rely upon language at sentencing and in the judgment of conviction that appellant would go to prison if he did not successfully complete drug court. We conclude that appellant failed to establish that his plea was not entered knowingly. Appellant's emphasis upon language at sentencing and in the judgment of conviction that he would go to prison if he did not successfully complete drug court does not establish that his plea was entered unknowingly. Appellant bargained for and received a term of probation. The written guilty plea agreement thoroughly spelled out the consequences of appellant's guilty plea, including the potential penalty of imprisonment. There is nothing in the written guilty plea agreement or in the plea canvass indicating that appellant was promised that he would only go to prison if he failed to complete drug court. Appellant's probation was revoked because he had violated several conditions of his probation, including the condition that he successfully complete drug court. Thus, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that this guilty plea was not entered voluntarily because it was made under duress and coerced by the Las Vegas Metropolitan Police Department (LVMPD). Appellant claimed that the LVMPD negotiated the deal with the district attorney and was present for all of his court appearances. Appellant claimed that officers from LVMPD informed him that they were personal friends with Judge Hardcastle. Appellant further claimed that LVMPD had the district

attorney add the additional addresses to the information in order to set his restitution so high that he would be unable to pay restitution. Finally, he claimed that he was threatened by the LVMPD and was too afraid to inform the court of the threats. We conclude that appellant failed to demonstrate that his guilty plea was not entered voluntarily. The district court specifically asked appellant if he was forced into entering the guilty plea, and appellant answered in the negative. The written guilty plea agreement, which appellant signed and informed the district court that he read and understood, states that appellant was not acting under duress or coercion. The written guilty plea agreement further specifically informed appellant that he was required to pay restitution "for all cases and counts." Appellant was represented by counsel at entry of the plea, and counsel signed a certificate stating that counsel fully explained the charges to appellant, advised appellant of the penalties for each charge and advised appellant that restitution may be ordered. Appellant's counsel further indicated that to the best of his knowledge that the plea was entered voluntarily. There is nothing in the record to support appellant's attempt to repudiate the representations that he made in open court that his pleas were voluntarily entered. Thus, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that he was promised that the State would not pursue another case involving a check in exchange for his guilty plea. We conclude that appellant failed to demonstrate that his plea was not entered knowingly and voluntarily. The written guilty plea agreement did not contain any promise that the State would not pursue another case involving a check. Rather, the written guilty plea agreement stated that the State would not oppose dismissal of case number 01F01511B, a case

involving a charge of possession of a stolen vehicle. Further, no mention was made during the plea canvass that the State would not pursue an additional charge involving a check. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[4] Thus, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that his counsel and LVMPD "told me after sentencing they would get me off probation and I could move from Vegas." We conclude that appellant failed to demonstrate that his plea was not entered knowingly and voluntarily. This alleged advice occurred after entry of the plea, and thus, appellant failed to establish that this advice affected his decision to enter a guilty plea. Appellant was properly advised of the potential consequences of his plea in the written guilty plea agreement and during the plea canvass. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.[5] Thus, we conclude that the district court did not err in denying this claim.

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 based on a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness. Further, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not

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[4]Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

[5]Id.

have pleaded guilty and would have insisted on going to trial.[6] The court need not consider both prongs of the test if the petitioner makes an insufficient showing on either prong.[7]

First, appellant claimed that his counsel did not "come up with the deal," but that the LVMPD negotiated the deal. Appellant further claimed that he did not find out until after sentencing that the information in the district court was different than that in the justice's court. Appellant failed to support these allegations with specific facts or indicate how either of these alleged errors impacted his decision to enter a guilty plea.[8] As discussed earlier, appellant indicated that he had read and understood the plea agreement—the same plea agreement that contained as an exhibit the information now objected to. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant claimed that he was informed that he could not withdraw his guilty plea. Appellant failed to support this claim with specific facts that if true would have entitled him to relief.[9] Appellant failed to indicate the basis for a motion to withdraw the guilty plea or the circumstances under which he was informed that he could not withdraw his plea. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

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[6]See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

[7]See Strickland v. Washington, 466 U.S. 668, 697 (1984).

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

[9]See id.

Third, appellant claimed that he had only limited contact with his counsel. Appellant further claimed that he was told at arraignment by his counsel to "just sign" the written guilty plea agreement. Again, appellant failed to support this claim with specific facts that if true would have entitled him to relief.[10] Appellant failed to indicate what further contact with his counsel would have accomplished or how the limited contact and advice of counsel affected his decision to enter a guilty plea. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Next, appellant claimed that he was not allowed to speak during the sentencing hearing. 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 there is a reasonable probability that the results of the proceedings would have been different absent counsel's alleged errors.[11] Appellant failed to support this claim with any specific facts that if true would have entitled him to relief.[12] Appellant failed to indicate what information or testimony he was prevented from presenting that would have made a difference to the outcome of the proceedings. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

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[10]See id.

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

[12]See Hargrove, 100 Nev. 498, 686 P.2d 222.

Finally, appellant appeared to claim that he received ineffective assistance of counsel during the probation revocation proceedings. Appellant claimed that a particular public defender refused to represent him at his probation revocation proceeding and informed him that she had warned him against entering his guilty plea. Even assuming, without deciding, that appellant had the right to the effective assistance of counsel during the probation revocation proceedings, appellant failed to demonstrate that his counsel was ineffective.[13] Appellant failed to indicate how counsel was ineffective at the probation revocation proceedings.[14] Appellant further failed to demonstrate that he was prejudiced by the representation that he received during the probation revocation proceedings. The record indicates that appellant stipulated to violating the terms and conditions of probation. Thus, we conclude that the district court did not err in denying this claim.

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[13]See Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973) (holding that counsel is required if the probationer requests counsel and makes a colorable claim that (1) he did not commit the alleged violations; or (2) that there are justifying or mitigating circumstances which make revocation inappropriate and these circumstances are difficult or complex to present); Fairchild v. Warden, 89 Nev. 524, 516 P.2d 106 (1973) (adopting the approach set forth in Gagnon v. Scarpelli); McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996) (recognizing that an ineffective assistance of counsel claim will lie only where the defendant has a constitutional or statutory right to the appointment of counsel).

[14]To the extent that appellant claimed his counsel at the probation revocation proceeding informed him that he could not file a direct appeal, appellant failed to support this claim with specific facts that if true would have entitled him to relief. See Hargrove, 100 Nev. 498, 686 P.2d 222.

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.[15] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Becker

_____, J.
Shearing

_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Douglas Medlar
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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