

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DEVON SUTTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40477

FILED

JUL 8 2004

BY *J. Shoop*
WANNETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

Appellant was originally convicted, pursuant to a guilty plea, of one count of first-degree murder with the use of a deadly weapon. The district court sentenced appellant to a prison term of life with parole eligibility after 20 years for murder, and an equal and consecutive term for the use of a deadly weapon. The sole issue raised on appeal was that the police had destroyed potentially exculpatory evidence by failing to test appellant's blood for PCP immediately after his arrest. This court affirmed the judgment of conviction, concluding that the issue had been waived by the entry of appellant's guilty plea.¹

On March 25, 2002, appellant filed a proper person petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplemental petition. The State filed a response to the petition and supplement. The district court entered findings of fact and conclusion of

¹Sutton v. State, Docket No. 34165 (Order of Affirmance, June 11, 2001).

law denying the petition on November 12, 2002, without having conducted an evidentiary hearing.

Appellant contends that the district court erred by concluding that his 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 showing of an abuse of discretion."²

In this case, appellant argues that the fact that he requested to be released on his own recognizance after he entered his plea demonstrates that he did not understand the consequences of his plea. We disagree. The potential sentence was contained in the plea agreement, which appellant acknowledged he had read and understood. Moreover, appellant was thoroughly canvassed by the district court, including an explanation of the sentence faced by appellant.

Appellant also argues that because he expressed a desire to withdraw his plea on February 18, 1999, and because his relationship with his attorney had deteriorated by the time of the entry of the plea, the district court should have concluded that his guilty plea was invalid. As factual support for these arguments, counsel for appellant merely cites to "Appellant's Appendix, Volume I."³ After reviewing the entire appendix,

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

³We note that there is only one volume in the appendix, and that volume is 146 pages long. This court's review of the appendix was hindered by the fact that the appendix does not comply with NRAP 30(c). Specifically, the documents are not arranged in chronological order, the index is not organized alphabetically, and the page numbers in the index are incorrect. Counsel is cautioned that failure to comply with the

continued on next page . . .

this court is unable to locate anything that shows appellant wished to withdraw his plea on February 18, 1999, or that there was any difficulty in the relationship between appellant and his counsel. Appellant has therefore failed to provide evidentiary support for his argument. Based on the foregoing, we conclude that the district court did not abuse its discretion in concluding that the guilty plea was valid.

Appellant also contends that his counsel was ineffective because counsel did not evaluate the effect that appellant's long-term use of PCP may have had on appellant's understanding of the consequences of his guilty plea. To state a claim of ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's performance, the outcome of the proceedings would have been different.⁴

In this case, the district court specifically found that appellant's claim was belied by the record, in that the guilty plea agreement stated that appellant was "not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding the entry of this plea." Moreover, at the entry of his plea, as previously noted, appellant was thoroughly canvassed.

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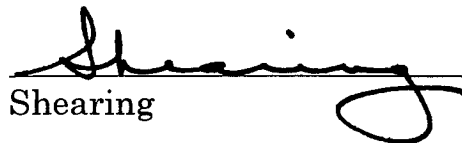
requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c).

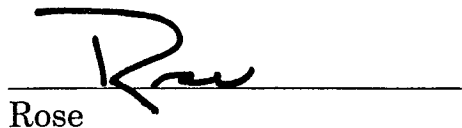
⁴Strickland v. Washington, 466 U.S. 668, 694 (1984).


The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁵ 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. We therefore conclude that the district court correctly found that counsel was not ineffective.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


Shearing, C.J.


Rose, J.


Maupin, J.

cc: Hon. Michael A. Cherry, District Judge
Law Office of Betsy Allen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).