

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD A. JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40653

FILED

NOV 21 2003

ORDER OF AFFIRMANCE

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

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 September 13, 2001, the district court convicted appellant, pursuant to an Alford plea,¹ of two counts of sexual assault on a minor under sixteen years of age. At his sentencing hearing, but prior to the imposition of a sentence, appellant made an oral motion to withdraw his guilty plea. The district court denied the motion and sentenced appellant to serve two consecutive terms of twenty years in the Nevada State Prison with the possibility of parole after five years. No direct appeal was taken.

On August 13, 2002, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 November

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

20, 2002, the district court denied appellant's petition. This appeal followed.

In his petition, appellant made several claims of ineffective assistance of counsel. 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 the deficient performance prejudiced the defense.² Further, a petitioner must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."³

First, appellant claimed that his counsel was ineffective for failing to advise him of his right to appeal. "[T]here is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" unless the defendant inquires about a direct appeal or there exists a direct appeal claim that has a reasonable likelihood of success.⁴ The burden is on the defendant to indicate to his attorney that he wishes to pursue an appeal.⁵ Appellant failed to demonstrate that he inquired about a direct appeal or had a direct appeal claim that had a reasonable likelihood of success. Appellant

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

³Hill v. Lockhart, 474 U.S. 52, 59 (1985); see Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

⁴See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

⁵See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

was further informed of the limited right to appeal in the written guilty plea agreement.⁶ Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective.

Second, appellant claimed that his counsel was ineffective for failing to properly investigate previous sexual assaults of one of the victims. He contended that the false allegations of sexual assault in the instant case were similar and therefore copied from previous sexual assaults experienced by one of the victims.

The record reveals that counsel filed a motion for disclosure of confidential records from Child Protective Services and Child Haven concerning, among others, the victim who had been previously sexually assaulted. Additionally, trial counsel filed a motion in limine to allow the defense to examine the victim and the victim's mother regarding the previous assault. Appellant pled guilty before the court could rule on this motion. Thus, the record belies appellant's allegation.⁷ Moreover, appellant failed to demonstrate a reasonable probability that he would have insisted on going to trial with further investigation by trial counsel. Therefore, appellant failed to demonstrate that his counsel was ineffective on this issue.

Third, appellant claimed that his counsel was ineffective for failing to object to the sentence he received. Appellant's sentence fell within the limits prescribed by NRS 200.366 and as set forth in the

⁶Id.

⁷See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

written plea agreement. Therefore, appellant failed to demonstrate that his counsel was ineffective in failing to object to appellant's sentence.

Finally, appellant made general claims that his counsel was ineffective for: (1) specifically withholding exculpatory evidence, (2) failing to request a medical and psychological evaluation of one of the victims, and (3) failing to adequately cross-examine the victims at the preliminary hearing. Appellant failed to support these claims with specific facts and articulate how counsel's performance was deficient in these areas.⁸ Therefore, we conclude that the district court did not err in denying these claims.

Appellant next raised a claim that his guilty plea was not entered knowingly because the court did not adequately explain the intricacies of lifetime supervision.⁹ A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.¹⁰ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a

⁸See id.

⁹Appellant also alleged that the imposition of lifetime supervision made his sentence illegal. A special sentence of lifetime supervision does not render appellant's sentence illegal. See NRS 176.0931(1)–(2).

¹⁰Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

clear abuse of discretion.¹¹ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.¹²

Based upon our review of the record on appeal, we conclude that appellant failed to establish that his plea was not entered knowingly. The totality of the circumstances reveals that appellant was made aware of the consequences of the plea.¹³ Although the judge did not specifically inform appellant that he would be subject to lifetime supervision during the plea canvass, the signed plea agreement stated, "I further understand that the Court will include as part of my sentence, in addition to any other penalties provided by law, lifetime supervision commencing after any period of probation or any term of imprisonment and period of release upon parole." Additionally, appellant answered affirmatively when asked whether he read, understood and discussed the plea agreement with his attorney. Thus, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that: (1) there was no probable cause to arrest him, (2) the trial court erred in denying his motion to

¹¹Hubbard, 110 Nev. at 675, 877 P.2d at 521.

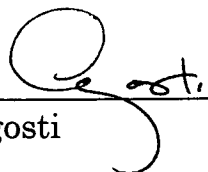
¹²State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

¹³See Palmer v. State, 118 Nev. ___, ___, 59 P.3d 1192, 1197 (2002) (holding that a guilty plea will not be invalidated because the judge did not specifically advise the defendant of lifetime supervision during the plea canvass "if the totality of the circumstances revealed by the record otherwise demonstrate that the defendant was aware of the consequences prior to the entry of the plea, and was so informed either by the written plea agreement, by counsel, or in some other manner").


withdraw his guilty plea, and (3) the judge who sentenced him should have been the same judge who accepted his plea. NRS 34.810(1)(a) provides that the court shall dismiss a petition for a writ of habeas corpus if the petitioner's conviction was the result of a guilty plea, and the petition is not based on a challenge that the plea was involuntarily or unknowingly entered or the plea was entered without the effective assistance of counsel. These claims fell outside the scope of a post-conviction habeas corpus petition.

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.¹⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁵


_____, C.J.
Agosti


_____, J.
Rose


_____, J.
Maupin

¹⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Richard A. Jackson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk