IN THE SUPREME COURT OF THE STATE OF NEVADA

GLEN THOMAS TROGDON A/K/A GLEN TOMAS TROGDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40895

FILED

NOV 25 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 November 7, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault and one count of lewdness with a minor under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of life in the Nevada State Prison with the possibility of parole after ten years. Appellant voluntarily dismissed his direct appeal.[1]

On November 5, 2002, appellant filed a post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. On February 4, 2003, the district court denied appellant's petition. This appeal followed.

[1]Trogdon v. State, Docket No. 38781 (Order Dismissing Appeal, January 6, 2003).

In his petition, appellant contended that his guilty plea was not knowing and voluntary. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.[2] Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[4]

Appellant first alleged that his plea was not knowing and voluntary because he was under the influence of medication at the time he entered his plea. We conclude that the totality of the circumstances reveals that appellant was made aware of the consequences of his plea. The signed written plea agreement stated that appellant made the plea voluntarily, and was not "under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair [his] ability to comprehend or understand this agreement or the proceedings surrounding [his] entry of this plea." Appellant additionally answered affirmatively when the court asked him whether he read, understood, and signed the agreement freely and voluntarily. Furthermore, appellant failed to provide sufficient specific facts to support his claim that he was under the influence of medication at the time that

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[2]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).

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

[4]State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

affected his ability to enter a knowing and voluntary guilty plea.[5] Thus, appellant failed to carry his burden of demonstrating that his plea was not entered knowingly and voluntarily due to medication.

Appellant next alleged that his plea was not knowing or voluntary because he was not given a competency hearing prior to the entry of his plea. We conclude that appellant failed to establish that his plea was not entered knowingly and voluntarily. Our review of the record reveals that appellant did indeed receive a competency evaluation and was deemed competent to stand trial prior to the entry of his guilty plea. Thus, the record belies appellant's allegation.[6] There are no facts in the record that demonstrate further evaluation was necessary. Therefore, the district court did not err in denying appellant's claim.

Appellant also claimed that he received ineffective assistance of trial counsel. 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, and there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.[7] The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.[8] A petitioner

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[5]See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

[6]See id. at 503, 686 P.2d at 225.

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

[8]See Strickland, 466 U.S. at 697.

must further demonstrate a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.[9]

Appellant alleged that trial counsel was ineffective for failing to assess his competency to plead guilty. He claimed that trial counsel was aware that appellant was under the influence of medication and depressed due to family and social problems. As discussed previously, appellant was given a competency evaluation and was deemed competent to stand trial. Additionally, the signed written plea agreement stated that appellant was not under the influence of any substance that would impair his ability to comprehend or understand the agreement or the proceedings surrounding the entry of his plea. Trial counsel also signed the plea agreement, which stated that to the best of his knowledge, appellant was not under the influence of alcohol, a controlled substance, or other drug when he consulted with appellant. Appellant does not provide specific facts supporting his allegation that trial counsel had knowledge that appellant's use of medication affected his ability to enter a knowing and voluntary guilty plea.[10] Therefore, appellant failed to demonstrate that counsel was ineffective on this issue.

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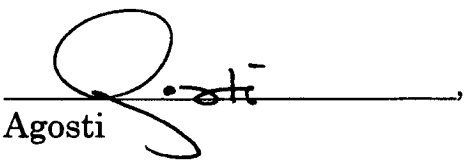
[9]See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1986).

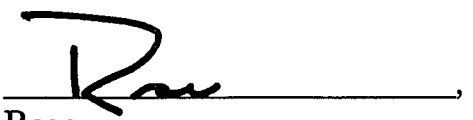
[10]See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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.[11] Accordingly, we

ORDER the judgment of the district court AFFIRMED.[12]



_____, C.J.
Agosti



_____, J.
Rose

_____, J.
Maupin

cc: Hon. John S. McGroarty, District Judge
Glen Thomas Trogdon
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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

[12]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.