

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY LEE BASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40973

FILED

JAN 28 2004

ORDER OF AFFIRMANCE

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

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

On August 17, 2001, the district court convicted Bass, pursuant to a guilty plea, of lewdness with a child under the age of 14. The district court sentenced Bass to serve a term of life in the Nevada State Prison with the possibility of parole. The district court suspended the sentence and placed Bass on probation subject to numerous special conditions. Bass moved to withdraw his direct appeal, and this court dismissed his appeal.¹

On July 31, 2002, with the assistance of counsel, Bass filed a post-conviction petition for a writ of habeas corpus in district court. The State opposed the petition. Bass filed a reply. The district court conducted an evidentiary hearing during which Bass's counsel presented evidence and made arguments. On November 4, 2002, the district court denied Bass's petition. This proper person appeal followed.

¹Bass v. State, Docket No. 38443 (Order Dismissing Appeal, April 30, 2002). In lieu of a remittitur, this court established April 30, 2002, as the date that the statutory period for filing a post-conviction petition for a writ of habeas corpus would commence to run. Id.

In his petition, Bass claimed that he received ineffective assistant of counsel. To establish ineffective assistance of counsel, a claimant must demonstrate that counsel's performance was deficient and that the deficient performance prejudiced the defense.² Further, a petitioner who has entered a guilty plea 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 "The question of whether a defendant has received ineffective assistance of counsel . . . is a mixed question of law and fact and . . . thus subject to independent review."⁴ However, "purely factual findings of an inferior tribunal regarding a claim of ineffective assistance are entitled to deference on subsequent review of that tribunal's decision."⁵

Bass claimed that trial counsel was ineffective for failing to investigate his claims, disregarding his information, and failing to discuss any of his defenses. The district court found that there was no evidence of ineffective assistance of counsel. During the evidentiary hearing, Bass's trial counsel testified that he investigated Bass's claims, interviewed Bass's witnesses, acted on information provided by Bass, discussed potential defenses with Bass, and negotiated a plea agreement as requested by Bass. This testimony demonstrates that the district court's

²Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

³Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁴Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (internal quotations and citations omitted).

⁵Id.

factual finding is supported by substantial evidence and, therefore, is not clearly wrong. Accordingly, we conclude that counsel was not deficient.

In his petition, Bass also claimed that his guilty plea was not entered knowingly, intelligently, or voluntarily because his counsel provided ineffective assistance. Specifically, Bass claimed that he did not have an opportunity to make an intelligent choice among alternatives because trial counsel did not discuss possible defenses with him. Bass's claim is belied by the record.⁶

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.⁷ Further, this court will not reverse a district court's determination concerning the validity of a plea absent an abuse of discretion.⁸ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁹

Based on our review of the record on appeal, we conclude that the district court did not err in denying this claim. In the written plea agreement, Bass acknowledged that he and his attorney had discussed the elements of the original charges, possible defenses, defense strategies, and the consequences of entering into a guilty plea agreement. Bass agreed that the plea bargain was in his best interest and that he signed the agreement voluntarily. Bass also expressed satisfaction with the

⁶See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to post-conviction relief if his factual allegations are belied by the record).

⁷Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

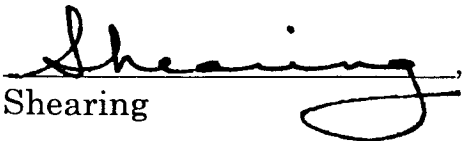
⁸Hubbard, 110 Nev. at 675, 877 P.2d at 521.

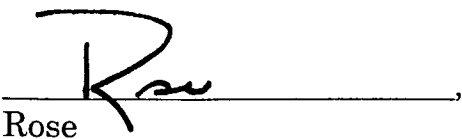
⁹State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.


performance of his attorney. During the district court's oral plea canvass, Bass acknowledged that he read the written plea agreement and discussed it with his attorney, he understood everything contained in the agreement and had no questions, he understood the charge to which he was pleading guilty, and he made the plea freely and voluntarily. As discussed above, we have concluded that Bass's claim of ineffective assistance of counsel is without merit. Thus, given the totality of the circumstances, Bass failed to meet his burden of demonstrating that his plea was not entered knowingly, intelligently, and voluntarily.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Shearing


_____, J.
Rose


_____, J.
Maupin

cc: Hon. Sally L. Loehrer, District Judge
Jerry Lee Bass
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).