

IN THE SUPREME COURT OF THE STATE OF NEVADA

PINKUS RAIZIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41002

FILED

DEC 30 2003

ORDER OF AFFIRMANCE

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

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

On February 25, 2002, the district court convicted Raizin, pursuant to a guilty plea, of two counts of sexual assault with a minor under 16 years of age and one count of lewdness with a child under the age of 14. The district court sentenced Raizin to serve two terms of 60 to 240 months and one term of life in the Nevada State Prison with the possibility of parole. The district court imposed all of the terms to run concurrently. Raizin did not file a direct appeal.

On September 23, 2002, Raizin filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an opposition. Raizin filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Raizin or conduct an evidentiary hearing. On February 6, 2003, the district court denied Raizin's petition. This appeal followed.

In his petition, Raizin contended that his guilty plea was not entered knowingly, intelligently, and voluntarily because he did not know the potential consequences of the plea. Raizin acknowledged that when he signed the guilty plea agreement he waived any defects in the State's

amended information regarding the dates on which the two sexual assaults were alleged to have occurred on. However, he claimed that he did not know that the State may in the future charge him with the crimes committed on the actual dates or that the actual dates of his offenses might be construed as evidence of additional crimes by agencies responsible for institutional placement and parole decisions.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>1</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>2</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>3</sup>

[T]he totality of the circumstances must demonstrate that a defendant pleaded guilty with knowledge of the direct consequences of his plea. Direct consequences are those ramifications that have a definite, immediate and largely automatic effect on the range of the defendant's punishment. Collateral consequences, by contrast, do not affect the length or nature of the punishment and are generally dependant on either the court's discretion, the defendant's future conduct, or the discretion of a government agency.<sup>4</sup>

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<sup>1</sup>Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

<sup>2</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

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

<sup>4</sup>Nollette v. State, 118 Nev. \_\_\_, \_\_\_, 46 P.3d 87, 89 (2002) (internal quotations and citations omitted) (emphasis added).

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, Raizin specifically waived any defects in the amended information regarding the dates of the first two counts of sexual assault; he 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; and he agreed that the plea bargain was in his best interest and that he had signed the agreement voluntarily. During the district court's oral plea canvass, Raizin acknowledged that he waived any defects in the amended information as part of the negotiations, the agreement had been read to him, he understood the charges, and he had talked with his counsel about the elements of the crime and possible penalties. The consequences Raizin complained of in his petition were mere possibilities that did not affect the length or nature of his punishment. As such, they were at best collateral consequences of the guilty plea. Raizin's unawareness of these collateral consequences did not render his guilty plea unknowing and involuntarily.<sup>5</sup> Thus, given the totality of the circumstances, Raizin has failed to meet his burden of demonstrating that his plea was not entered knowingly, intelligently, and voluntarily.

In his petition, Raizin also raised several claims of ineffective assistance of trial counsel. "A claim of ineffective assistance of counsel presents a mixed question of law and fact and is therefore subject to independent review."<sup>6</sup> To establish ineffective assistance of counsel, a claimant must show both that counsel's performance was deficient and

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<sup>5</sup>See *id.* at \_\_\_, 46 P.3d at 89.

<sup>6</sup>*Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).

that the deficient performance prejudiced the defense.<sup>7</sup> 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."<sup>8</sup> "A reasonable probability is a probability sufficient to undermine confidence in the outcome."<sup>9</sup>

First, Raizin claimed that his counsel was ineffective for advising him to accept the State's plea offer and stipulate to defects in the amended information pertaining to the dates on which the sexual assaults were alleged to have occurred. Specifically, Raizin contended that his counsel should have advised him of the possibility that the State may in the future charge him with the crimes committed on the actual dates or that the actual dates of his offenses might be construed as evidence of additional crimes by agencies responsible for institutional placement and parole decisions. As such, Raizin argued that his counsel should have advised him of possible collateral consequences. This court has previously held that a defendant's counsel is not ineffective for failing to provide unsolicited information regarding collateral consequences of a plea.<sup>10</sup> Therefore, we conclude that the district court did not err in denying this claim.

Second, Raizin claimed that his counsel was ineffective for advising him to plead guilty to the charge of lewdness with a minor. Specifically, Raizin argued that counsel failed to discuss all of the

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<sup>7</sup>Id. (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

<sup>8</sup>Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

<sup>9</sup>Id. (quoting Strickland, 446 U.S. at 694).

<sup>10</sup>Nollette, 118 Nev. at \_\_\_, 46 P.3d at 92-93.

elements of the crime of lewdness with a minor and contended that had counsel done so he would not have pleaded guilty and would have insisted on going to trial. The record belies Raizin's claim.<sup>11</sup> In the plea agreement, Raizin stated that he had discussed all of the elements of the original charges with his attorney,<sup>12</sup> he understood the nature of the charges, and he understood that the State had to prove each element of the charges. Additionally, during the district court's plea canvass Raizin admitted that he had talked with counsel about the elements of the crimes and the possible penalties. As such, we conclude that the district court did not err in denying this claim.

Third, Raizin claimed that his counsel was ineffective for failing to provide the district court with mitigating factors that might cause the district court to sua sponte suspend a sentence and place Raizin on probation on the lewdness count. To this end, Raizin argued that his counsel was deficient for advising him not to say anything during sentencing, failing to have Raizin evaluated by a psychologist, and not providing the district court with the results of the psychological examination. Raizin failed to state how his testimony at sentencing and the results of a psychological examination would, with reasonable probability, have resulted in a suspended sentence and probation. As

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<sup>11</sup>See 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).


<sup>12</sup>Raizin was originally charged with six counts of sexual assault with a child under 14 years of age, and two counts of lewdness with a child under the age of 14.


such, Raizin's claim was not supported by sufficient facts and was properly denied by the district court.<sup>13</sup>

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.<sup>14</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>15</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Gibbons

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

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<sup>13</sup>See Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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

<sup>15</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.