

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD JEFFREY MULDER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41444

FILED

MAR 04 2004

ORDER OF AFFIRMANCE

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

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

On March 1, 2002, the district court convicted Mulder, pursuant to an Alford plea,<sup>1</sup> of one count of first-degree murder. The district court sentenced Mulder to serve a term of life in the Nevada State Prison with the possibility of parole in twenty years. No direct appeal was taken.

On February 24, 2003, Mulder filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Mulder or to conduct

---

<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

an evidentiary hearing. On August 4, 2003, the district court filed an amended order denying Mulder's petition.<sup>2</sup> This appeal followed.

In his petition, Mulder contended that his trial counsel was ineffective for allowing him to plead guilty to first-degree murder instead of involuntary manslaughter. Specifically, Mulder contended that he was an "excessive alcoholic," a friend of the victim, and drunk at the time the victim was killed. Thus, Mulder contended that his sentence was harsh in nature and the district court should either reduce his sentence by ten years or allow him to withdraw his plea and proceed to trial.

A petition challenging a judgment of conviction based on a guilty plea may only allege that the guilty plea was entered without the effective assistance of counsel, or was entered unknowingly and involuntarily.<sup>3</sup> To state a claim of ineffective assistance of counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.<sup>4</sup> A petitioner must further show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>5</sup>

---

<sup>2</sup>The district court originally issued an order denying Mulder's petition on June 27, 2003.

<sup>3</sup>See NRS 34.810(1)(a).

<sup>4</sup>See Hill v. Lockhart, 474 U.S. 52, 57 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

<sup>5</sup>Kirksey, 112 Nev. at 988, 923 P.2d at 1107 (quoting Hill, 474 U.S. at 59).

Moreover, a guilty plea is presumptively valid, and the burden is on the defendant to show that it was not freely, knowingly, and voluntarily entered under a totality of the circumstances.<sup>6</sup> When a guilty plea is entered pursuant to Alford, the district court must determine that there is a factual basis for the plea, and resolve the conflict between the defendant's waiver of trial and claim of innocence.<sup>7</sup>

Our review of the record reveals that Mulder was originally charged with open murder with the use of a deadly weapon. As such, Mulder faced the possibility of being sentenced to two consecutive terms of life in prison without the possibility of parole.<sup>8</sup> Thereafter, Mulder signed a written plea agreement where he pleaded guilty to first-degree murder on the condition that he would receive a sentence of life in prison with the possibility of parole in twenty years.

In the agreement, Mulder acknowledged that he was entering the plea to avoid the possibility of a harsher sentence. Mulder also acknowledged in the agreement that he discussed the charges and possible defenses with his attorney; he believed that entering the plea was in his best interest; and, he was entering the plea voluntarily, without any duress or coercion.

---

<sup>6</sup>See Freese v. State, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

<sup>7</sup>See Tiger v. State, 98 Nev. 555, 558, 654 P.2d 1031, 1033 (1982); see also State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996).

<sup>8</sup>See NRS 193.165; NRS 200.010; NRS 200.030.


During Mulder's plea canvass, when asked by the district court if he understood the plea agreement before signing it, Mulder replied, "Yes." When asked by the district court if he thought signing the plea was in his best interest, Mulder replied, "Yes, sir." Mulder also responded affirmatively to further questions by the district court during the canvass that he was entering the plea freely and voluntarily with an understanding of the possible sentences he may receive.


The State then proffered that if Mulder had proceeded to trial, the State would have shown evidence that Mulder willfully, "and with premeditation and deliberation and/or by torture and with malice aforethought, killed Charles Whitaker," by pouring ignitable fluid on him and igniting the fluid and/or striking Whitaker with a liquor bottle or unknown object. Thereafter, the district court accepted Mulder's plea and later sentenced him to serve a term of life in prison with the possibility of parole in twenty years.

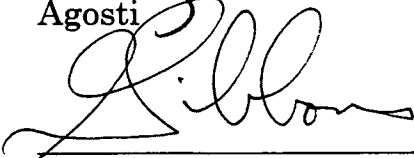
The State provided a sufficient factual basis to support Mulder's plea, and a totality of the circumstances from the record shows that Mulder's plea was freely, knowingly, and voluntarily entered. Mulder failed to show how his trial counsel was ineffective for advising him to enter the plea or how his trial counsel was otherwise ineffective in any way. Therefore, we conclude that the district court properly denied Mulder's petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Mulder is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

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

  
\_\_\_\_\_, J.  
Agosti

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

cc: Hon. John S. McGroarty, District Judge  
Ronald Jeffrey Mulder  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.