

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUNIOR HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42570

FILED

JUN 28 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant Junior Hall's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On December 18, 2002, the district court convicted Hall, pursuant to a guilty plea, of sexual assault on a minor under the age of fourteen. The district court sentenced Hall to serve a term of life in the Nevada State Prison with the possibility of parole after twenty years. No direct appeal was taken.

On September 30, 2003, Hall 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 Hall or to conduct an evidentiary hearing. On November 5, 2003, the district court denied Hall's petition. This appeal followed.

In his petition, Hall first raised an allegation of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of

reasonableness.¹ A petitioner must further establish "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³

Hall contended that his trial counsel was ineffective for failing to adequately investigate and discuss possible defenses with him. Specifically, Hall's trial counsel possessed mental health reports in which Hall was diagnosed with mild mental retardation. Hall claimed that based on this information, his trial counsel erred in advising him to enter a guilty plea and instead should have pursued a defense of mistaken belief of consent.

We conclude that Hall's claim is without merit. The record reveals that twenty-year-old Hall sexually assaulted a seven-year-old girl. Hall failed to establish that his mistaken belief that the victim consented to the sexual conduct was reasonable,⁴ such that his trial counsel was deficient in advising him to plead guilty. As such, Hall did not demonstrate that his trial counsel was ineffective on this issue, and we affirm the order of the district court with respect to this claim.

¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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

³Strickland, 466 U.S. at 697.

⁴See Honeycutt v. State, 118 Nev. 660, 670, 56 P.3d 362, 368 (2002) (providing that "Nevada law supports a defense of reasonable mistaken belief of consent in sexual assault cases") (emphasis added).

Hall next claimed that his guilty plea was not knowingly and voluntarily entered. A guilty plea is presumptively valid, and Hall carries the burden of establishing that his plea was not entered knowingly and intelligently.⁵ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁶ Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁷

First, Hall claimed that his guilty plea was not knowingly or voluntarily entered because his guilty plea agreement did not accurately describe the standard by which he must be certified pursuant to NRS 213.1214. The guilty plea agreement stated that prior to a grant of parole, a psychological panel must certify that Hall is "not a menace to the health, safety or morals of others." However, the correct certification standard, as amended in 2001, is that Hall "does not represent a high risk to reoffend based upon a currently accepted standard of assessment."⁸ Hall contended that based upon the "currently accepted standard of assessment," he represents a high risk to re-offend and will therefore be ineligible for parole. Hall further claimed that he would not have pleaded guilty if the guilty plea agreement contained the correct certification standard.

⁵See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁶State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

⁷Hubbard, 110 Nev. at 675, 877 P.2d at 521.

⁸See NRS 213.1214(1)(c).

We conclude that under the totality of the circumstances, Hall failed to demonstrate that his guilty plea was invalid. During the oral plea canvass, the district court asked Hall if he understood that he could not be granted parole until he was certified. Hall's trial counsel subsequently elaborated on this requirement:

[TRIAL COUNSEL]: For you to get paroled, they have to do an evaluation to make sure you're not a danger to reoffend.

THE DEFENDANT: Okay.

THE COURT: Do you understand that?

THE DEFENDANT: Yes, your honor.

Based on this exchange, Hall did not establish that his guilty plea was entered unknowingly or involuntary. Further, the certification requirement is a collateral consequence of Hall's guilty plea.⁹ "A defendant's awareness of a collateral consequence is not a prerequisite to a valid plea and, consequently, may not be the basis for vitiating it."¹⁰ Thus, we affirm the order of the district court with respect to this claim.

Next, Hall claimed that his guilty plea was not knowingly or voluntarily entered because—in contrast to the terms of the plea agreement—he will not be eligible for parole after he has served twenty years. Hall alleged that because he represents a high risk to re-offend based on the current standard of assessment, he will never be granted parole. We conclude that Hall's claim is without merit. In accordance with the terms of the guilty plea agreement, Hall was sentenced to life

⁹See Anushevitz v. Warden, 86 Nev. 191, 467 P.2d 115 (1970).

¹⁰Palmer v. State, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002).

with the possibility of parole after twenty years. As such, Hall failed to demonstrate that he received a sentence in excess of the plea agreement.

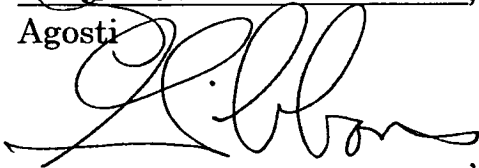
Further, Hall is incorrectly equating parole eligibility with a grant of parole. Hall's guilty plea agreement provided that he would be eligible for parole after he served twenty years of his sentence—not that he would necessarily be granted parole at that time.¹¹ Consequently, Hall did not demonstrate that his guilty plea was invalid, and the district court did not err in denying the claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hall is not entitled to relief and that briefing and oral argument are unwarranted.¹² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

¹¹See NRS 213.10705 (providing that parole is an act of grace by the State and no person has the right to parole).

¹²See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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