IN THE SUPREME COURT OF THE STATE OF NEVADA

LUCINDA L. ANDERSON A/K/A LUCINDA I. ANDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42650

FILED

OCT 0 8 2004

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 Lucinda Anderson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On August 19, 2002, the district court convicted Anderson, pursuant to a guilty plea, of one count of driving and/or being in actual physical control of a vehicle while under the influence of intoxicating liquor. The district court sentenced Anderson to serve a term of 42 to 180 months in the Nevada State Prison. Anderson did not file a direct appeal.

On August 15, 2003, Anderson 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, the district court declined to appoint counsel to represent Anderson. The district court conducted an evidentiary hearing on December 17, 2003, and subsequently denied Anderson's petition. This appeal followed.

In her petition, Anderson claimed that her guilty plea was not knowingly or voluntarily entered. A guilty plea is presumptively valid,

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and Anderson carries the burden of establishing that her plea was not entered knowingly and intelligently.[1] In determining the validity of a guilty plea, this court looks to the totality of the circumstances.[2] This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.[3]

First, Anderson contended that her guilty plea was not knowingly entered because she was misinformed about the sentence she would receive. Anderson believed that she was pleading guilty in exchange for a sentence of 24 to 140 months. We conclude that the totality of the circumstances demonstrate that Anderson was made aware of the consequences of her plea. The written guilty plea agreement, which Anderson acknowledged having read, understood, and signed, provided that she would be sentenced to a term of 42 to 180 months. During the oral plea canvass, the district court specifically asked Anderson if she understood that she would be sentenced to a term of at least three and a half years, and Anderson answered affirmatively. Further, during the evidentiary hearing, both the prosecutor and Anderson's trial counsel testified that the plea agreement was for a minimum term of 42 months, and Anderson was never informed otherwise. Consequently, the district court did not err in denying Anderson relief on this claim.

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

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

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

Second, Anderson claimed that her guilty plea was not knowingly or intelligently entered because there was no factual basis for her plea. We conclude that this claim is entirely without merit. During the oral plea canvass, Anderson stated, "I came out of a parking lot onto Flamingo Road. I was under the influence of alcohol and involved in an accident." Because Anderson's contention is belied by the record,[4] we affirm the order of the district court with respect to this claim.

Third, Anderson argued that her guilty plea was not knowingly entered because she believed a term of the agreement was that her blood alcohol level was 0.10 at the time of the accident; however, during the plea canvass the State provided that her blood alcohol level was "[0.20] or a little less." We conclude that Anderson failed to establish that her guilty plea was not knowingly entered. Anderson was guilty of the same offense whether her blood alcohol level was 0.10 or 0.20.[5] Therefore, Anderson failed to demonstrate how her guilty plea was unknowing with respect to this claim, and the district court did not err in denying Anderson relief.

Anderson next raised several claims 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.[6] A petitioner must further establish "a reasonable probability that, but for

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[4]See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

[5]See 2001 Nev. Stat., ch. 10, § 98, at 174.

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

counsel's errors, [she] would not have pleaded guilty and would have insisted on going to trial."[7] The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.[8]

Anderson first claimed that her trial counsel was ineffective for failing to take any action after the district court sentenced her to an excessive prison term. As discussed previously, however, Anderson failed to demonstrate that she was sentenced in excess of the plea agreement. As such, she did not establish that her trial counsel was ineffective on this issue.

Next, Anderson contended that her trial counsel was ineffective for representing to her that she would receive a minimum sentence of 24 months. During the evidentiary hearing, Anderson's trial counsel testified that he never informed Anderson that she would receive a sentence of 24 months pursuant to the plea negotiations. The district court's determination that Anderson's claim lacked merit was supported by substantial evidence and was not clearly wrong.[9] Thus, we affirm the order of the district court with respect to this claim.

Lastly, Anderson alleged that her trial counsel was ineffective for failing to ensure that the State followed the terms of the plea agreement. However, Anderson did not demonstrate that the State breached the plea agreement in any way. Consequently, the district court did not err in denying Anderson relief on this claim.

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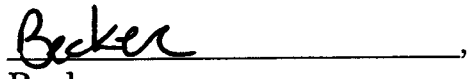
[7]Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

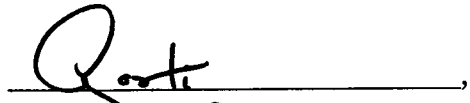
[8]Strickland, 466 U.S. at 697.

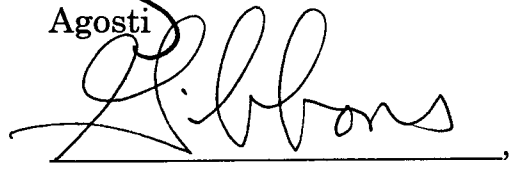
[9]See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Anderson is not entitled to relief and that briefing and oral argument are unwarranted.[10] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 , J.
Becker

 , J.
Agosti

 , J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Lucinda I. Anderson
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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