

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAPPY HANK WILLIAMS, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53118

FILED

JAN 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of robbery of the elderly. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Motion to withdraw guilty plea

Appellant Happy Hank Williams, Sr., asserts that the district court abused its discretion by denying his presentence motion to withdraw his guilty plea, which was based on a claim of ineffective assistance of counsel. This claim lacks merit.

We presume that the district court correctly assessed the validity of a plea on a motion to withdraw the plea and will not reverse its decision absent an abuse of discretion. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court conducted a hearing on Williams' motion and found that there was no credible evidence to support a defense that

Williams was unconscious or in a coma at the time of the crime and therefore counsel did not act unreasonably by failing to investigate or advise Williams of this defense. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing a two-part test for ineffective assistance of counsel). The district court further found that, under the totality of the circumstances, Williams entered his guilty plea voluntarily, knowingly and intelligently. See Crawford v. State, 117 Nev. 718, 722, 30 P.3d 1123, 1125-26 (2001) (“A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently.”). The district court’s findings are supported by substantial evidence and are not clearly erroneous, and its conclusions are correct as a matter of law. Therefore, we conclude that the district court did not abuse its discretion by denying Williams’ presentence motion to withdraw his guilty plea.

Abuse of discretion at sentencing

Williams contends that the district court abused its discretion at sentencing by imposing a prison term instead of granting probation because he had been clean and sober and had not incurred any new criminal charges in nearly a year.

The district court had discretion to grant probation, and Williams has failed to show that the district court abused its discretion at sentencing. See NRS 176A.100(1)(c); Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (sentencing judge’s “determination will not be overruled absent a showing of abuse of discretion”). The district court considered the nature of Williams’ offense, his criminal history and lack of success in abiding by previous terms of probation, and other factors, including those listed at NRS 193.167(3). Williams does not allege that

the district court relied on impalpable or highly suspect evidence. See Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The sentence imposed by the district court was within the parameters provided by the relevant statutes and is not so unreasonably disproportionate to the crime as to shock the conscience. See NRS 200.380(2); NRS 193.167(1)(f); Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). And Williams has not alleged that the relevant sentencing statutes are unconstitutional. See id. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

Having considered Williams' contentions and concluded they lack merit, we

ORDER the judgment of conviction AFFIRMED.

/ Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Robert H. Perry, District Judge
Washoe County Alternate Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk