

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN WILLIAM MILLIRON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84977-COA

FILED

MAR 14 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brian William Milliron appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 27, 2020, and supplemental pleadings. Eighth Judicial District Court, Clark County; James Crockett, Senior Judge.

Milliron first argues the district court erred by denying his claims challenging the validity of his guilty plea. “This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea.” *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). A guilty plea is presumptively valid, and a petitioner carries the burden of establishing the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

First, Milliron claimed his guilty plea was not knowingly, intelligently, or voluntarily entered because he suffered from unmedicated mental health issues at the time of his plea. During his guilty plea canvass, Milliron informed the court that he was not suffering from any medical

condition and that he read, understood, and signed the guilty plea agreement.

At the evidentiary hearing on his petition, Milliron testified to the following. He suffers from mental health issues that make him feel “foggy” and unable to focus, and he did not understand all of the terms of his plea agreement because counsel misinformed him about his ability to be paroled on his first attempt. He did not understand or remember everything that happened at his guilty plea canvass, but he remembered being scared, and he understood the charges and that he was taking a plea deal because he was afraid of what counsel had told him were the potential consequences he faced if he did not take the offer.

Milliron did not explain how his mental health issues prevented him from knowingly, voluntarily, and intelligently entering his guilty plea, and he presented no expert testimony during the hearing regarding how his mental health issues affected his ability to understand the plea proceedings. In light of these circumstances, Milliron failed to demonstrate any medical condition he suffered from affected his understanding of his plea.¹

Second, Milliron claimed he did not enter his guilty plea knowingly, intelligently, or voluntarily because counsel failed to provide him with discovery or to adequately communicate with him. Counsel testified that he met with Milliron, Milliron was able to read the entirety of

¹To the extent Milliron argued that his plea was not entered intelligently due to a lack of competence, Milliron failed to demonstrate that he lacked “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding [or] a rational as well as factual understanding of the proceedings against him.” See *Melchor-Gloria v. State*, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)). Therefore, we conclude the district court did not err by denying this claim.

the case file when they were together, and counsel went over discovery with Milliron. Counsel explained he did not give Milliron a copy of the discovery in order to prevent issues with other inmates and did not play the surveillance video for Milliron due to limitations within the jail. During his plea canvass, Milliron informed the court that counsel was able to answer his questions and he was satisfied with counsel's services. In light of these circumstances, Milliron failed to demonstrate how counsel's alleged inaction affected his understanding of his plea.

Finally, Milliron claimed his guilty plea was not knowingly, intelligently, or voluntarily entered as he did not understand what was required for a sex offender to be released on parole. Parole is a collateral consequence to a guilty plea, and thus Milliron's lack of understanding about its requirements is not a basis for invalidating his plea. *See Palmer v. State*, 118 Nev. 823, 826-30, 59 P.3d 1192, 1194-96 (2002). Having considered the totality of the circumstances, we conclude Milliron did not overcome the presumption that his guilty plea was valid. Therefore, we conclude the district court did not err by denying this claim.²

Milliron also argues the district court erred by denying his claims of ineffective assistance of trial-level counsel. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there

²To the extent Milliron argues on appeal that his guilty plea was not knowingly, intelligently, or voluntarily entered because he did not understand his appeal rights, Milliron did not raise this claim in his pleadings below, and we need not consider it in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district 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).

First, Milliron claimed counsel was ineffective during the plea-bargaining stage for failing to investigate Milliron's mental health. Milliron failed to demonstrate by a preponderance of the evidence that counsel should have questioned Milliron's mental health. Counsel testified that Milliron did not tell him about his mental health issues until after the entry of his plea. And Milliron testified that he understood when he initially met with counsel that he was facing a sentence of 100 years to life in prison and had asked counsel to pursue a specific plea deal that included concurrent sentences. Based on this evidence, Milliron failed to demonstrate counsel's performance was deficient for failing to investigate Milliron's mental health during the plea-bargaining process.

In addition, Milliron received a substantial benefit from his plea deal. Milliron pleaded guilty to two felony counts and stipulated to an aggregate prison sentence of 20 years to life. However, he was initially accused of committing multiple sexual offenses, and counsel explained that Milliron had a prior sexual offense conviction, which made him eligible for a prison sentence of life without the possibility of parole if he were convicted

at trial. Counsel also testified that he had a confession from Milliron and made Milliron aware there was video of Milliron and the complaining witness. In light of these circumstances, Milliron failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Second, Milliron claimed counsel was ineffective during the plea-bargaining stage for failing to provide him with all discovery. As discussed above, counsel testified that he went over discovery with Milliron and explained why he did not provide Milliron with the discovery or play surveillance video for him. Milliron failed to demonstrate how counsel's failure to provide discovery affected the plea-bargaining stage. In addition, as also discussed above, Milliron received a substantial benefit from his plea deal. Accordingly, Milliron failed to demonstrate counsel's performance was deficient or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's inaction. Therefore, we conclude the district court did not err by denying this claim.

Third, Milliron claimed counsel was ineffective during the plea-bargaining stage for failing to adequately communicate with him. As discussed above, counsel met with Milliron such that Milliron was able to read the entirety of the case file and go over discovery with counsel. Milliron affirmed that counsel was able to answer Milliron's questions and he expressed his satisfaction with counsel's services. Milliron failed to demonstrate how additional communication would have affected the plea-bargaining stage. In addition, as discussed above, Milliron received a substantial benefit from his plea deal. Accordingly, Milliron failed to demonstrate counsel's performance was deficient or a reasonable

probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged inaction. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. James Crockett, Senior Judge
Monique A. McNeill
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk