

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM EARLE NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 33788

FILED

OCT 01 2002

ORDER OF AFFIRMANCE

JANET WEAVER BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CLERK OF SUPREME COURT

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

On August 10, 1998, the district court convicted appellant, pursuant to a guilty plea, of burglary, forgery, and theft. The district court sentenced appellant to concurrent terms of 48 to 120 months for burglary, 19 to 48 months for forgery, and 24 to 60 months for theft in the Nevada State Prison. This court affirmed appellant's judgment of conviction.¹

On October 7, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an opposition. Appellant filed a reply. The district court, pursuant to NRS 34.750 and 34.770, declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 7, 1999, the district court denied appellant's petition. This appeal followed.²

¹See Nelson v. State, Docket No. 32618 (Order of Affirmance, September 10, 2002).

²To the extent that appellant appeals from the denial of his motion to dismiss counsel and his motion to vacate his judgment pursuant to NRCP 60(b)(3), this court lacks jurisdiction to consider this portion of the

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In his petition appellant first claimed that the district court lacked jurisdiction to accept his guilty plea because: (1) he was arraigned and unlawfully remanded for a preliminary hearing on the basis of unsworn, unsigned criminal complaints without a complaining witness; (2) the district court had no legal authority to conduct a preliminary hearing; (3) he was held for 14 days without a probable cause hearing; (4) the grand jury indictment was unlawfully presented to the district court by the district attorney without the physical presence of the grand jury; (5) his cases were unlawfully consolidated; and (6) that the amended information was insufficient. We conclude that the district court did not err in denying these claims. By pleading guilty, appellant waived any claims that related to the deprivation of his constitutional rights that occurred prior to the entry of his guilty plea.³ In addition, these claims fall outside the narrow scope of claims that can be raised in a post-conviction petition challenging a judgment of conviction based upon a guilty plea.⁴ Moreover, appellant failed to show that the district court lacked jurisdiction to accept his guilty plea.

Next, appellant made four claims of ineffective assistance of trial counsel.⁵ He claimed that his counsel were ineffective for: (1) failing to file a writ of prohibition to halt the unlawful preliminary hearing; (2)

... continued

appeal as no statute or court rule permits for an appeal from an order denying these motions in a criminal case. See Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

³See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

⁴See NRS 34.810(1)(a).

⁵Appellant dismissed his counsel over one year prior to the beginning of his jury trial and the subsequent entry of his guilty plea.

failing to file a motion to dismiss the “unlawfully presented grand jury indictment”; (3) failing to file the timely pre-trial writ of habeas corpus against the unlawful charges; and (4) failing to object to the unlawful consolidation of charges. We conclude that the district court did not err in denying these claims. Appellant failed to demonstrate that his counsels’ performance was deficient or that he was prejudiced.⁶ Moreover, appellant failed to support these claims with sufficient factual allegations that would entitle him to relief.⁷

Lastly, appellant claimed that his guilty plea was involuntary because: (1) he was denied the right to litigate the 4th amendment issues that followed his unlawful arrest and illegal detention; (2) he was denied the right to have a “probable cause for arrest” hearing; (3) his motions to dismiss the unlawful, unsworn criminal complaints which had no complaining witnesses were wrongfully denied; and (4) he was forced to enter a guilty plea after two days of trial where he was denied the right to subpoena witnesses. We conclude that the district court did not err in denying these claims. Appellant failed to overcome the burden that his guilty plea was not entered knowingly and voluntarily.⁸ Moreover, on direct appeal, this court considered and rejected appellant’s claim that his guilty plea was unknowingly and involuntarily entered because he was

⁶See Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996).


⁷See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


⁸See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

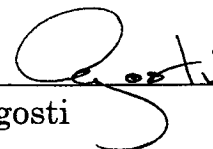
denied the right to subpoena witnesses.⁹ The doctrine of law of the case prevents further relitigation of this issue.¹⁰

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED¹²


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Jeffrey D. Sobel, District Judge
Attorney General/Carson City
Clark County District Attorney
William Earle Nelson
Clark County Clerk

⁹See Nelson v. State, Docket No. 32618 (Order of Affirmance, September 10, 2002).

¹⁰See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

¹¹See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹²We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.