

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY E. BOLDEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43657

**FILED**

JAN 25 2005

ORDER OF AFFIRMANCE

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

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. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On February 5, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted burglary. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. Appellant did not file a direct appeal.

On April 10, 2004, appellant 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 appellant or to conduct an evidentiary hearing. On July 14, 2004, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised 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.<sup>1</sup> A petitioner must further establish a reasonable probability that, but for counsel's errors, the results of the proceedings would have been different.<sup>2</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>3</sup>

Appellant claimed that his trial counsel was ineffective for failing to object at appellant's sentencing hearing, failing to provide the district court with his records from drug court and failing to determine why appellant had been removed from the drug court program. Our review of the record on appeal reveals that appellant was removed from the drug court program due to the issuance of a third bench warrant. Appellant was informed that if a bench warrant issued he would be removed from the program and would be sentenced according to his plea agreement. Appellant failed to demonstrate that his counsel was ineffective. Accordingly, the district court did not err in denying these claims.

Appellant also claimed that the district court violated his plea agreement by sentencing him to a prison term after he had completed the drug court program. Appellant waived this claim by failing to raise it on direct appeal.<sup>4</sup> Moreover, appellant's claim is belied by the record.<sup>5</sup> The

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

<sup>2</sup>See Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

<sup>3</sup>See Strickland, 466 U.S. at 697.


<sup>4</sup>See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).


<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

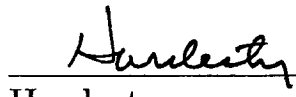
record on appeal reveals that appellant was removed from and never completed the drug court program. Accordingly, the district court did not err in denying this claim.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Becker

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Michael A. Cherry, District Judge  
Larry E. Bolden  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).