

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE J. SMITH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43809

FILED

JAN 20 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CLERK DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is a proper person appeal from an order of the district court denying appellant Willie J. Smith Jr.'s post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On December 2, 2002, the district court convicted Smith, pursuant to a jury verdict, of possession of a controlled substance. The district court sentenced Smith to serve a term of 18 to 48 months in the Nevada State Prison. This court affirmed Smith's conviction and sentence.¹ The remittitur issued on September 9, 2003.

On May 7, 2004, Smith 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 Smith or to conduct an evidentiary hearing. On September 16, 2004, the district court denied Smith's petition. This appeal followed.

In his petition, Smith contended that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient

¹Smith v. State, Docket No. 40590 (Order of Affirmance and Limited Remand to Correct the Judgment of Conviction, August 15, 2003).

to invalidate a judgment of conviction, Smith must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that counsel's errors were so severe that they rendered the jury's verdict unreliable.²

Specifically, Smith complained that his counsel was ineffective for failing to file a pretrial motion to suppress and other evidentiary motions. However, Smith declined to identify what evidence he desired his counsel to suppress or what evidentiary motions he wanted his counsel to file.³ Smith also alleged that his counsel was ineffective for allowing prejudicial evidence to be admitted without objection. Again, Smith failed to describe the evidence to which he believed his counsel should have objected.⁴ As Smith did not substantiate or explain his claims, we conclude that he failed to demonstrate that his counsel was ineffective in these matters.

Smith also asserted that his appellate counsel was ineffective. To establish ineffective assistance of appellate counsel, Smith must demonstrate that counsel's performance fell below an objective standard of reasonableness, and the deficient performance prejudiced the defense.⁵ "To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal."⁶

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

³See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

⁴Id.

⁵Strickland, 466 U.S. 668.

⁶Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

Smith argued that his appellate counsel was ineffective for failing to raise numerous issues on appeal and for lying to him. Smith failed to provide any support or explanation whatsoever to substantiate his claims.⁷ Therefore, we conclude that Smith failed to establish that his appellate counsel was ineffective.

Smith also claimed that due to the cumulative effect of the errors committed by his trial and appellate counsels, his conviction was invalid. We conclude that because Smith's ineffective assistance of counsel claims are without merit, he failed to demonstrate any cumulative error and is therefore not entitled to relief on this basis.

Smith also contended that there was insufficient evidence to support his conviction. However, we considered and rejected this issue on direct appeal. Therefore, further consideration of Smith's claim is barred by the doctrine of law of the case.⁸

Finally, Smith raised the following alleged errors committed during his trial: abuse of process; prejudicial voir dire; improper opening statement by the State; introduction of conflicting and inconsistent testimony; introduction of perjurious testimony; introduction of improper and prejudicial evidence; use of facts and testimony not in evidence; improper denial of a motion for mistrial; improper removal of remarks from the record; malicious prosecution; "incompatible closing argument" by the State; violation of double jeopardy; conspiracy by police officers to convict him; and prejudicial effect of all the above alleged errors. As these claims were more appropriate for direct appeal and Smith failed to

⁷Hargrove, 100 Nev. at 502, 686 P.2d at 225.

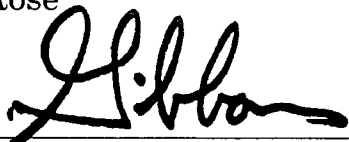
⁸Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

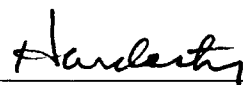
demonstrate good cause for his failure to do so, we conclude that Smith waived these matters.⁹

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Smith is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ However, in our review of Smith's direct appeal, we discovered a clerical error in the judgment of conviction. The judgment of conviction reflected that Smith was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. On direct appeal, we remanded this matter to the district court for correction of the judgment of conviction. However, it does not appear that the error was corrected. Therefore, we once again remand this matter to the district court for correction of the judgment of conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED, and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

⁹Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

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

cc: Hon. Michelle Leavitt, District Judge
Willie J. Smith Jr.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk