

IN THE SUPREME COURT OF THE STATE OF NEVADA

PERRION PIPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43887

FILED

APR 22 2005

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

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of grand larceny and burglary. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court adjudicated appellant Perrion Piper as a habitual criminal for each count and sentenced him to serve two concurrent prison terms of 60 to 240 months.

Piper first contends that his trial counsel was ineffective for failing to file a pretrial motion to suppress evidence obtained in an unnecessarily suggestive photographic lineup. We decline to consider Piper's contention. Claims of ineffective assistance of counsel may not be raised on direct appeal, unless the claims have already been the subject of an evidentiary hearing.¹ In this case, no such hearing was conducted. Accordingly, Piper must raise his claim of ineffective assistance of counsel in the district court in the first instance by initiating a post-conviction proceeding.

¹Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

Piper next contends that the State failed to adduce sufficient evidence to sustain the burglary conviction because there was no evidence presented that he entered the casino with the intent to steal. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.²

In particular, several witnesses identified Piper as the individual who took \$700.00 in cash from a casino patron, while she gambled at a slot machine. The casino surveillance videotape of the crime showed that an individual, identified at trial as Piper, stole the money within minutes of entering the casino. Additionally, a casino employee testified that Piper had previously been "trespassed" from the casino, meaning that he was prohibited from entering the casino premises for any purpose. The jury could reasonably infer from the evidence presented that Piper entered the casino with the intent to steal.³ It is for the jury to determine the weight and credibility to give conflicting evidence, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.

Finally, Piper contends that the district court abused its discretion in admitting evidence that he had previously been "trespassed" from the casino because it was more prejudicial than probative. We disagree.

²See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

³NRS 205.060(1).

NRS 48.015 allows for the admission of evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Nevertheless, even if evidence is relevant, it is “not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.”⁴ The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.⁵

After hearing arguments from counsel, the district court balanced the probative value of the evidence against its potential for unfair prejudice and ruled that the evidence was admissible. The evidence that Piper was not allowed in casino for any lawful purpose was relevant to show that Piper entered the casino with the intent to steal.⁶ Accordingly, we conclude that the district court did not commit manifest error in admitting the evidence.

Having considered Piper's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Piper was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

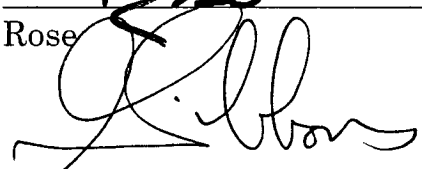
⁴NRS 48.035(1).

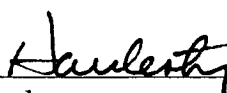
⁵See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

⁶NRS 48.045(2).

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


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk