

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN J. ADAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44046

FILED

JAN 07 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 Melvin J. Adams' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On July 11, 2003, the district court convicted Adams, pursuant to a guilty plea, of five counts of burglary, two counts of robbery and one count of attempted robbery. The district court sentenced Adams to a term of 16 to 72 months in the Nevada State Prison for each count of burglary, a term of 26 to 120 months for each count of robbery, and a term of 16 to 72 months for the count of attempted robbery. The district court imposed the terms for three counts of burglary and the two counts of robbery to run consecutively, and imposed the terms for the remaining counts to run concurrently. No direct appeal was taken.

On July 8, 2004, Adams 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 Adams or to conduct an evidentiary hearing. On November 8, 2004, the district court denied Adams' petition. This appeal followed.

In his petition, Adams argued that he was "forced" to proceed to sentencing without the assistance of counsel. The Sixth Amendment right to counsel provides every criminal defendant with the right to have representation during each "critical stage" of adversarial proceedings, including sentencing.<sup>1</sup> However, a defendant also has a constitutional, unqualified right to self-representation when there is a voluntary and intelligent waiver of the right to counsel.<sup>2</sup>

Here, after entering his guilty plea, but prior to sentencing, Adams filed a motion to proceed in proper person, which the district court granted. Adams cannot now be heard to complain that he was "forced" to proceed to sentencing without the assistance of counsel. Accordingly, we conclude Adams' claim is without merit.

It also appears that Adams challenged the district court's denial of his motion to withdraw his guilty plea. As this matter is more appropriate for a direct appeal, we conclude that Adams waived this issue.<sup>3</sup>

However, as a separate and independent ground upon which to deny relief, we conclude that Adams failed to demonstrate that his plea was involuntary. Adams asserted that his plea was involuntary because

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<sup>1</sup>United States v. Wade, 388 U.S. 218, 226-27 (1967); see Dzul v. State, 118 Nev. 681, 685, 56 P.3d 875, 878 (2002).

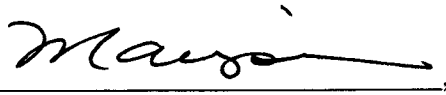
<sup>2</sup>Lyons v. State, 106 Nev. 438, 443, 796 P.2d 210, 213 (1990); see Baker v. State, 97 Nev. 634, 636, 637 P.2d 1217, 1218 (1981) (citing Faretta v. California, 422 U.S. 806 (1975)).

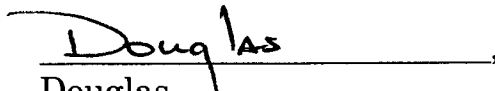
<sup>3</sup>Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

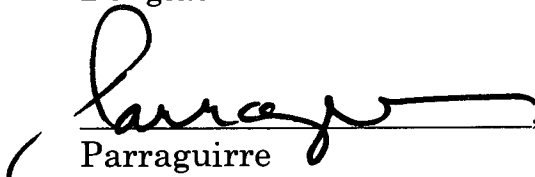
he was unaware of the consequences of the habitual criminal enhancement. However, Adams' claim is belied by the record.<sup>4</sup> During the plea canvass, the district court advised Adams twice about the consequences of such enhancement. Adams also asserted that his counsel was ineffective. However, he failed to substantiate his claim with specific factual allegations.<sup>5</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Adams 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.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Melvin J. Adams  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>5</sup>Id. at 502, 686 P.2d at 225.

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