

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY D. CANTRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45022

FILED

MAY 19 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribick*
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; Sally L. Loehrer, Judge.

On June 20, 2003, the district court convicted appellant, pursuant to a jury verdict, of one count each of burglary while in the possession of a deadly weapon and robbery with the use of a deadly weapon. The district court sentenced appellant to serve a term of 26 to 120 months in the Nevada State Prison for the burglary conviction and a consecutive term of 26 to 120 months for the robbery conviction, plus an equal and consecutive term of 26 to 120 months for the deadly weapon enhancement. This court affirmed the judgment of conviction and sentence on appeal.¹ The remittitur issued on January 21, 2004.

On December 21, 2004, appellant filed a proper person post-conviction petition for a writ of habeas corpus and motion to appoint counsel in the district court. The State opposed the petition. Appellant

¹Cantrell v. State, Docket No. 41746 (Order of Affirmance, December 23, 2003).

filed a reply. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On March 2, 2005, the district court denied appellant's petition and motion. This appeal followed.²

In his petition, appellant contended that his trial counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that his counsel's errors were so severe that they rendered the jury's verdict unreliable.³ The district court may dispose of a claim if the petitioner makes an insufficient showing on either prong.⁴

Appellant claimed that his counsel was ineffective for failing to have the complaint against him dismissed pursuant to NRS 189.007(2). Appellant argued that the State improperly consolidated more than one offense into a single count in the complaint. This claim is belied by the record.⁵ Our review of the record on appeal reveals that the complaint properly charged appellant with the offenses of burglary while in possession of a deadly weapon and robbery with the use of a deadly weapon in two separate counts. To the extent that appellant argued that the deadly weapon enhancement should have been charged as a separate count, this claim also lacks merit. The use of a deadly weapon is an

²We conclude that the district court did not err in denying appellant's motion for appointment of counsel. See NRS 34.750.

³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁴Strickland, 466 U.S. at 697.


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

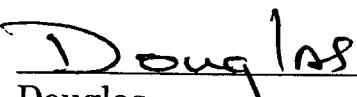
enhancement to the underlying offense, and does not constitute a separate offense that must be charged by a separate count.⁶ Appellant failed to demonstrate that his counsel was deficient. Accordingly, we conclude that the district court did not err in denying this claim.

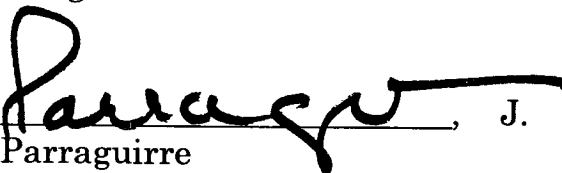
Appellant also claimed that the district court erred and the State engaged in prosecutorial misconduct by consolidating his two offenses into one count. Appellant waived this claim by failing to raise it on direct appeal and failed to demonstrate good cause for his failure to do so.⁷ Moreover, as noted above, this claim lacks merit. Accordingly, we conclude that 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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁶NRS 193.165.

⁷See NRS 34.810(1)(b)(2).

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Sally L. Loehrer, District Judge
Barry D. Cantrell
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk