

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ARTHUR BROWN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45296

**FILED**

**FEB 17 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On March 17, 2004, appellant James Arthur Brown was convicted, pursuant to a guilty plea, of one count of robbery. The district court sentenced Brown to serve a prison term of 24 to 84 months. Brown did not file a direct appeal.

On January 4, 2005, Brown, with the assistance of counsel, filed a post-conviction petition for a writ of habeas corpus. The State opposed the petition. Without conducting an evidentiary hearing, the district court denied the petition. Brown filed this timely appeal.

Brown contends that the district court erred in denying the petition because his defense counsel was ineffective. In particular, Brown alleges that his counsel was ineffective for (1) allowing Brown to plead guilty to a crime that he did not commit and the State could not prove; and (2) failing to recommend that Brown proceed to trial under the defense

theory of mental incapacity. We conclude that Brown's contentions lack merit.

In this case, the district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.<sup>1</sup> Brown has failed to show that the district court's finding is not supported by substantial evidence or is clearly wrong.<sup>2</sup> Moreover, Brown has failed to show the district court erred as a matter of law.<sup>3</sup> We note that Brown has failed to make a credible claim of factual innocence<sup>4</sup> and, in the plea agreement and the plea canvass, he admitted to facts sufficient to constitute the crime of robbery under a theory of accomplice liability.<sup>5</sup> Additionally, Brown received a substantial benefit for the guilty plea in

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<sup>1</sup>466 U.S. 668 (1984).

<sup>2</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>3</sup>See id.

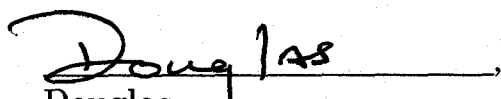
<sup>4</sup>Cf. Mitchell v. State, 109 Nev. 137, 139-41, 848 P.2d 1060, 1060-62 (1993) (allowing defendant to withdraw her plea where she brought motion to withdraw prior to sentencing and provided both a credible claim of factual innocence and a claim that she misunderstood the plea canvass).

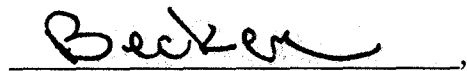
<sup>5</sup>See Garner v. State, 116 Nev. 770, 779-81, 6 P.3d 1013, 1020 (2000) (sufficient evidence existed to sustain robbery conviction for getaway driver under theory of accomplice liability), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002); see also Archie v. Sheriff, 92 Nev. 613, 614, 555 P.2d 1233, 1234 (1976) (sufficient evidence to bind driver of getaway car over for robbery because "presence, companionship, and conduct after an offense are circumstances from which one's participation in the crime may be inferred").

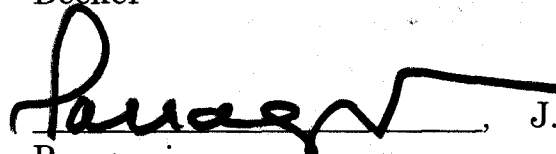
that the State dismissed the conspiracy count, as well as the age enhancement on the robbery count. Accordingly, we conclude that the district court did not abuse its discretion in denying the petition.

Having considered Brown's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Douglas

 J.  
Becker

 J.  
Parraguirre

cc: Hon. Stewart L. Bell, District Judge  
Cristalli & Saggese, Ltd.  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk