

IN THE SUPREME COURT OF THE STATE OF NEVADA

WALLACE EVAN SHERFIELD, A/K/A
WALLACE E. SHEFIELD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45562

FILED

OCT 05 2005

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

On September 28, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of sixty to one hundred and fifty months in the Nevada State Prison. No direct appeal was taken.

On March 15, 2005, appellant 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 appellant or to conduct an evidentiary hearing. On May 25, 2004, the district court summarily denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel.¹ To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that there is a reasonable probability of a different outcome absent the alleged errors.² When a conviction is based upon a guilty plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.³ The court need not consider both prongs if the petitioner makes an insufficient showing on either prong.⁴

Appellant claimed that his trial counsel was ineffective for failing to communicate or visit appellant, investigate a defense that may help to reduce his sentence, address any mistakes regarding the number of prior felony convictions, and thoroughly investigate and use all available resources to obtain a fair sentence. Appellant did not provide any specific

¹To the extent that appellant raised any claims independently of the ineffective assistance of counsel claims, those claims were properly denied as they fell outside the narrow scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

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

³See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁴Strickland, 466 U.S. at 697.

facts in support of these claims.⁵ Thus, appellant failed to demonstrate that his trial counsel was ineffective in this regard, and the district court properly denied relief on this claim.

Next, appellant claimed that his trial counsel was ineffective for allowing appellant to stipulate to treatment under the small habitual criminal statute because the State failed to amend the information to include a count of habitual criminality or present a count of habitual criminality in an indictment. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record belies appellant's claim that the notice of habitual criminality was not included in the information.⁶ The original information filed prior to the arraignment and the amended information attached to the guilty plea agreement both contain a notice of habitual criminality. The record reveals that appellant was adequately notified of the State's intent to seek habitual criminal adjudication. Therefore, we conclude that the district court did not err in denying relief on this claim.

Finally, it appears that appellant argued that his sentence was illegal because the State had failed to amend the information to include a count of habitual criminality or present a count of habitual criminality in an indictment. This claim fell outside the narrow scope of claims permissible in a motion to correct an illegal sentence.⁷ Further, as

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

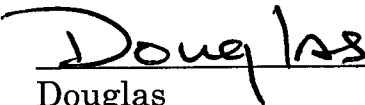
⁶See Hargrove, 100 Nev. 498, 686 P.2d 222.


⁷See Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

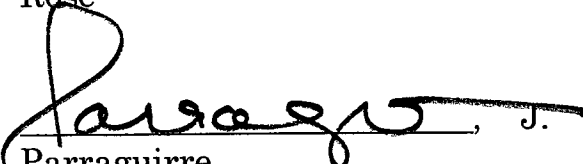
discussed above, a review of the record on appeal reveals that a notice of habitual criminality was included in the original and amended informations. Therefore, we conclude that the district court did not err in determining that appellant was not entitled to relief.

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.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Wallace Evan Sherfield
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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