IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 46162

FILED

FEB 17 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Michael A. Cherry, Judge.

On December 5, 2000, appellant pleaded guilty to theft. Pursuant to the plea agreement, all further proceedings were stayed so appellant could attend an in-patient drug treatment program. Appellant failed to comply with the terms of the plea agreement and was taken into custody to be sentenced. On July 9, 2004, before sentencing, appellant filed a motion to withdraw his guilty plea. The State opposed the motion. On October 26, 2004, the district court denied the motion and convicted appellant, pursuant to the plea agreement, of theft. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison but declined to adjudge appellant a small habitual criminal. This court upheld appellant's conviction on direct appeal.[1] The remittitur issued May 19, 2005.

[1]Piper v. State, Docket No. 44149 (Order of Affirmance, April 22, 2005).

06-03585

On July 6, 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 October 13, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.[2] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[3]

First, appellant claimed his counsel was ineffective for advising him to plead guilty to a felony when he was only charged with a misdemeanor. Our review of the record on appeal reveals that appellant agreed to plead guilty to a fictitious felony charge in exchange for the State's promise not to charge him as a habitual criminal and not to oppose probation if appellant successfully completed an in-patient drug treatment program. At the plea hearing, appellant specifically waived any defects in the amended information, including the statement that the value of the

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

[3]Strickland v. Washington, 466 U.S. 668, 697 (1984).

property he stole exceeded $250. Appellant waived this defect to obtain the benefit of the plea agreement. Counsel was not deficient. Accordingly, we conclude the district court did not err in denying this claim.

Second, appellant claimed his counsel was ineffective for coercing him into pleading guilty. Appellant made this same argument in his direct appeal, and this court determined the claim was belied by the record.[4] Once this court rules on the merits of an issue, the ruling is the law of the case and the issue will not be revisited.[5] Further, counsel's advising appellant of the risks he faced if he went to trial is not, without more, coercion. Accordingly, we conclude the district court did not err in denying this claim.

Third, appellant claimed his counsel was ineffective for failing to present mitigating evidence at his sentencing hearing and that, had counsel done so, appellant would have received a more lenient sentence. Appellant failed to demonstrate counsel's performance prejudiced him. Our review of the record on appeal reveals that appellant received the exact sentence he bargained for in the plea agreement. In addition, the district court specifically declined to adjudge appellant a habitual criminal and to sentence appellant to the five to twenty year term of imprisonment available under that statute.[6] Accordingly, we conclude the district court did not err in denying this claim.

Appellant also claimed the State violated his right to due process by amending the information without notice. By pleading guilty,

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[4]Piper v. State, Docket No. 44149 (Order of Affirmance, April 22, 2005).

[5]Pellegrini v State, 117 Nev. 860, 879, 34 P.3d 519, 532 (2001).

[6]See NRS 207.010(1)(a).

appellant waived the right to challenge all errors that arose prior to the plea.[7] As a separate and independent ground for denying this claim, the claim lacked merit. Our review of the record reveals the State amended the information on the same day appellant entered his guilty plea; the information was amended to conform to appellant's guilty plea. Accordingly, we conclude 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.

Douglas, J.

Becker, J.

Parraguirre, J.

cc: Hon. Michael A. Cherry, District Judge
Perrion Piper
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[7]Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

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