

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP LEE BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46646

PHILLIP LEE BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46951

FILED

JUN 08 2006

ORDER OF AFFIRMANCE

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

These are proper person appeals from orders of the district court dismissing and denying appellant's post-conviction petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. We elect to consolidate these appeals for disposition.¹

On October 26, 2005, the district court convicted appellant, pursuant to a guilty plea, of possession of a controlled substance (Category D Felony). The district court sentenced appellant to serve a term of twelve to thirty months in the Nevada State Prison. Appellant did not file a direct appeal.

Docket No. 46646

On November 1, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On November 21, 2005, appellant filed a second proper person post-conviction

¹NRAP 3(b).

petition for a writ of habeas corpus in the district court. The State opposed the petitions, arguing that the petitions should be dismissed because they were not verified and did not substantially comply with the statutory form.² 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 January 13, 2006, the district court dismissed appellant's petitions for failure to verify and substantially comply with the required statutory form. Appellant's appeal is docketed in this court in Docket No. 46646.

We conclude that the district court did not err in dismissing these petitions. Appellant failed to substantially comply with the statutory form and verify his petitions. Additionally, the district court dismissed the petitions without prejudice to allow appellant to refile in order to substantially comply with the procedural requirements of NRS chapter 34. We conclude that the district court did not err in this regard.

Docket No. 46951

On December 12, 2005, appellant filed a post-conviction petition for a writ of habeas corpus in the district court.³ The State opposed the petition. Appellant filed a reply. 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 March 6, 2006, the district court denied appellant's petition. Appellant's appeal is docketed in this court in Docket No. 46951.

²See NRS 34.730; NRS 34.735.

³This petition was in compliance with the statutory requirements regarding verification and form.


Appellant first contended that his plea was unknowingly and involuntarily entered because the term that he was sentenced to was illegal for a conviction for possession, pursuant to NRS 453.336(4), which sets forth that a person convicted for a first offense of possession of less than an ounce of marijuana is guilty of a misdemeanor. Appellant failed to demonstrate that his plea was involuntary or unknowing. NRS 453.336 is not a misdemeanor when the defendant has prior convictions involving controlled substances. Appellant had prior convictions involving controlled substances, and appellant never verbally objected to the veracity of those convictions when the existence of the convictions was discussed in court. Therefore, appellant's conviction was properly treated as a felony. Appellant was thoroughly canvassed on his understanding of the sentence, and appellant specifically questioned the district court on language in the plea agreement regarding the court's discretion to determine sentence when the parties had stipulated to the sentence. Appellant admitted in his reply that his plea was knowing and voluntary. Appellant benefited by his plea agreement in avoiding the more serious original charge of sale of a controlled substance. Thus, appellant's plea was knowingly and voluntarily entered, and the district court did not err in denying this claim.


Second, appellant claimed that his conviction pursuant to NRS 453.336 was improperly enhanced because the State did not produce certified copies of his past convictions. Appellant additionally claimed the State did not prove he possessed marijuana. These claims are outside the scope of a petition for a writ of habeas corpus challenging a judgment of

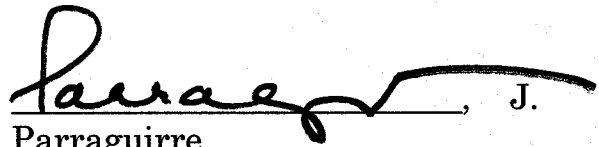
conviction based on a guilty plea.⁴ Thus, the district court did not err in denying these claims.

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.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Phillip Lee Brooks
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁴See NRS 34.810(1)(a).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁶We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in these matters, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.