

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRISS LONNIE ROGERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47290

**FILED**

NOV 29 2006

ORDER OF AFFIRMANCE

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

This is an appeal from an order denying appellant Criss Lonnie Rogers's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Rogers was convicted, pursuant to a guilty plea, of two counts of robbery with the use of a deadly weapon. He was adjudicated a habitual felon and sentenced to two concurrent terms of life in prison with the possibility of parole. This court affirmed Rogers's conviction and sentence on appeal.<sup>1</sup>

Rogers filed a timely petition for a writ of habeas corpus, which the district court dismissed without conducting an evidentiary hearing. This appeal followed.

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<sup>1</sup>Rogers v. State, Docket No. 42895 (Order of Affirmance, April 4, 2005).

Rogers's sole issue on appeal is that the district court erred in refusing to conduct an evidentiary hearing respecting his claim that his counsel was ineffective for allowing him to stipulate to habitual felon status when he had only one prior felony conviction. "A petitioner is entitled to a post-conviction evidentiary hearing when he asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief."<sup>2</sup>

Pursuant to the plea agreement, Rogers stipulated that he was a habitual felon pursuant to NRS 207.012 and acknowledged the applicable punishment range. To support its allegation that Rogers was a habitual felon, the prosecution presented during the sentencing hearing copies of charging documents and a judgment of conviction reflecting that Rogers had been previously convicted of three counts of robbery in November 1991. All three robberies were prosecuted in the same information. Rogers argues that the district court erred in not conducting an evidentiary hearing on his claim that his counsel was ineffective for allowing him to stipulate to habitual felon status because his three prior robberies constituted one conviction not three.

This court has held that "where two or more convictions grow out of the same act, transaction or occurrence, and are prosecuted in the same indictment or information, those several convictions may be utilized

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<sup>2</sup>Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002).

only as a single 'prior conviction' for purposes of applying the habitual criminal statute."<sup>3</sup> Rogers asserted on direct appeal that the district court inadequately considered his stipulation because his habitual felon status was based on three felony convictions that were prosecuted in the same information.<sup>4</sup> This court noted that he perpetrated the prior three robberies at three different businesses on three different days and against five different victims. We rejected Rogers's argument, concluding that as these convictions did not arise out of the same act, transaction, or occurrence, they were appropriately considered separate convictions for the purpose of determining Rogers's eligibility under NRS 207.012.<sup>5</sup> We conclude that the district court properly dismissed Rogers's ineffective-assistance-of-counsel claim without an evidentiary hearing because he failed to assert a claim that would entitle him to relief.

Rogers further argues that the district court dismissed his petition on an improper basis by concluding that his ineffective-assistance-of-counsel claim was barred by the doctrine of the law of the case. Although Rogers's claim of ineffective assistance of counsel was not directly barred by the law of the case, the district court correctly concluded that it was dependent upon a proposition that was considered and rejected

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<sup>3</sup>Rezin v. State, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979).

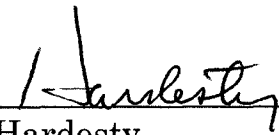
<sup>4</sup>Rogers, Docket No. 42895.

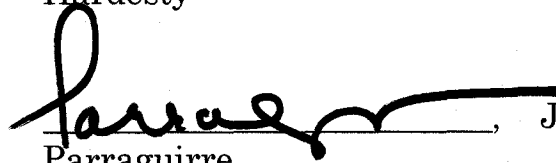
<sup>5</sup>Id.

by this court, and thus Rogers could not demonstrate prejudice. Consequently, we conclude that the district court did not err in dismissing this claim without an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge  
Mary Lou Wilson  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk