

IN THE SUPREME COURT OF THE STATE OF NEVADA

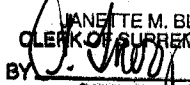
JAMES GOODALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47310

FILED

OCT 17 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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; Valerie Adair, Judge.

On May 25, 2005, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of five to twenty years in the Nevada State Prison. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on February 17, 2006.

On March 9, 2006, 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

¹Goodall v. State, Docket No. 45274 (Order of Affirmance, January 23, 2006).

conduct an evidentiary hearing. On May 11, 2006, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that he received ineffective assistance of trial and appellate counsel.² 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.³ In order to establish ineffective assistance of appellate counsel, a petitioner must demonstrate deficient performance and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal.⁴ The court need not address both components of the inquiries if the petitioner makes an insufficient showing on either one.⁵

²To the extent that appellant raised any issues independently from his claims of ineffective assistance of counsel, we conclude that the district court did not err in determining that those claims were outside the scope of the petition. See NRS 34.810(1)(a).

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

⁴Kirksey, 112 Nev. at 998, 923 P.2d at 1114 (1996) (citing to Strickland v. Washington, 466 U.S. 668 (1984)).

⁵Strickland, 466 U.S. at 697 (1984).

First, appellant claimed that his trial counsel was ineffective for failing to object to the district court's failure to validate his prior convictions for purposes of habitual criminal adjudication. Appellant claimed that the district court improperly relied on a stipulation to habitual criminal treatment.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim. The record establishes that appellant did more than stipulate to habitual criminal status; appellant waived proof of the prior convictions in the instant case.⁶ A notice of intent to seek habitual criminal punishment and a motion to amend the information with an attached second amended information set forth the prior felony convictions supporting the habitual criminal adjudication. In his guilty plea agreement, appellant stipulated to habitual criminal treatment, and appellant was informed of the potential sentence for small habitual criminal treatment. The presentence report described the prior convictions. During the guilty plea canvass, appellant's trial counsel informed the district court that the matter had been negotiated and that "[b]oth parties agree to habitual criminal statute treatments of the charge and so that it would run concurrent with the habitual sentence he is currently serving in Case No. C202137X. Furthermore, the State agrees to dismiss Case No. 200344X." The district court had the parties clarify that it was small habitual criminal treatment

⁶See Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003).

with a sentence of five to twenty years. Appellant did not dispute the existence of the prior felony convictions. Appellant failed to demonstrate that he would have not have pleaded guilty and would have insisted on going to trial in light of the substantial benefit he received in this negotiation—a concurrent sentence with another district court case and dismissal of yet another district court case. Therefore, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.

Second, appellant claimed that his trial counsel was ineffective for failing to object to his habitual criminal adjudication because his prior felony convictions were nonviolent property offenses. We conclude that the district court did not err in denying this claim. The record on appeal indicates that appellant had seven prior felony convictions. Thus, appellant qualified for habitual criminal treatment under NRS 207.010. Further, NRS 207.010 makes no allowance for nonviolent property offenses.⁷ Therefore, appellant failed to demonstrate that his trial counsel was ineffective in this regard.

Third, appellant claimed that his trial counsel was ineffective for failing to challenge his habitual criminal adjudication on the ground that the prior district court case in which he was adjudicated a habitual

⁷See McGervey v. State, 114 Nev. 460, 467, 958 P.2d 1203, 1208 (1998).

criminal was part of the same act. Appellant, relying upon Rezin v. State,⁸ reasoned that he should not have been adjudicated a habitual criminal in this case as well.

We conclude that the district court did not err in determining that this claim lacked merit. Appellant did not establish that the criminal act in the instant case, burglary, was part of the same act in his prior criminal case. Even assuming that the burglary was a part of the same criminal act in the prior case, appellant failed to demonstrate that his habitual criminal adjudication was improper as NRS 207.010 allows for habitual criminal treatment for each felony offense if the defendant has the requisite number of prior convictions. Appellant's reliance upon Rezin was misplaced as it only involves the tabulation of the prior convictions.⁹ Therefore, appellant failed to demonstrate that his trial counsel was ineffective in this regard.

Finally, to the extent that appellant claimed that his appellate counsel was ineffective for failing to raise any of the aforementioned challenges to his habitual criminal adjudication on appeal, appellant

⁸95 Nev. 461, 596 P.2d 226 (1979).

⁹Id. at 462, 596 P.2d at 227 (holding 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 only as a single 'prior conviction' for purposes of applying the habitual criminal statute").

failed to demonstrate that any of these issues would have had a reasonable likelihood of success on appeal for the reasons discussed above.

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.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹

Becker J.
Becker

Hardesty J.
Hardesty

Parraguirre J.
Parraguirre

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, 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.

cc: Hon. Valerie Adair, District Judge
James Goodall
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk