IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM CLYDE HINKLE, JR. A/K/A WILLIAM CLYDE HINKLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48284

FILED

FEB 28 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant William Clyde Hinkle, Jr.'s post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

Hinkle was convicted, pursuant to a jury verdict, of one count of felony driving under the influence, and sentenced to serve a prison term of 20-50 months and ordered to pay a fine of $2,000.00. This court dismissed Hinkle's untimely direct appeal due to a lack of jurisdiction.[1]

On March 20, 2006, Hinkle filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Hinkle, and counsel filed a supplement to the petition. The State opposed Hinkle's petition, but agreed that Hinkle "expressed a desire to appeal [his conviction] and his counsel did not file a [timely] notice of appeal." The district court conducted an evidentiary hearing and found that counsel was ineffective

[1]Hinkle v. State, Docket No. 45996 (Order Dismissing Appeal, January 12, 2006).

for failing to file a direct appeal on Hinkle's behalf.[2] The district court also considered and rejected the claims Hinkle would have raised on direct appeal, and on October 13, 2006, entered an order denying his petition. This timely appeal followed.

First, Hinkle contends that the district erred by rejecting his claim that he could not be convicted of third-offense felony DUI because (1) he was originally charged with misdemeanor DUI, and (2) one of the convictions used to enhance the instant charge to a felony occurred subsequent to the primary offense, and "[NRS] 484.3792 states an offense must occur prior to the primary offense, when being used to enhance the penalty of the law." We disagree.

NRS 484.3792(3) unequivocally states: "[A]n offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions." (Emphasis added.) Therefore, Hinkle's contention is belied by the record.[3] We also note that Hinkle does not challenge either the validity of any of the convictions used for enhancement purposes or that they occurred within the statutory 7-year period. Accordingly, we conclude that the district court did not err by rejecting this claim.

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[2]See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

[3]In its order denying his petition, the district court noted that Hinkle was "informed by trial counsel, appellate counsel, and this court, ad nauseam, that Nevada law simply requires three offenses within a 7 year period, regardless of the sequence."

Second, Hinkle contends that the district court erred by rejecting his claim of juror bias. Specifically, Hinkle argues that two members of the jury were court clerks employed by Nye County. At no point in the proceedings below or on appeal has Hinkle articulated with any factual specificity how he was prejudiced by any alleged bias.[4] The district court found that Hinkle "offered absolutely nothing in support of this claim in his petition or at hearing." We agree and conclude that the district court did not err by rejecting this claim.

Finally, Hinkle contends that the district court erred by finding that counsel was not ineffective for failing to investigate his case. We disagree. Once again, Hinkle has not supported his claim with the requisite factual specificity. Moreover, Hinkle cannot demonstrate that counsel's errors were so severe that there was a reasonable probability that the outcome of his trial would have been different.[5] The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.[6] Hinkle cannot demonstrate that the district court's findings are not supported by substantial evidence or are clearly wrong. Moreover, Hinkle has not demonstrated that the district court erred as a matter of law.

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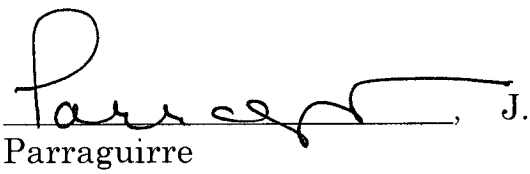
[4]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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

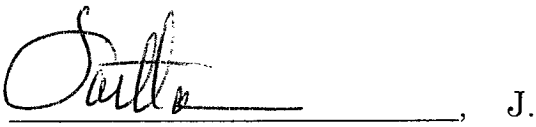
[6]See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Therefore, having considered Hinkle's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. John P. Davis, District Judge
David H. Neely III
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk