

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG ANTONIO MLACNIK A/K/A
MIKE TATE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48945

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY G. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On August 27, 2003, appellant Greg Antonio Mlacnik was convicted, pursuant to a jury verdict, of one count of grand larceny. The district court adjudicated Mlacnik as a habitual criminal and sentenced him to serve a prison term of 10 to 25 years. Mlacnik filed a direct appeal, and this court affirmed the judgment of conviction.¹

On August 16, 2004, Mlacnik filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel, and counsel filed a supplemental petition. After conducting an evidentiary hearing, the district court denied the petition. Mlacnik filed this timely appeal.

Mlacnik contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, Mlacnik contends

¹Mlacnik v. State, Docket No. 42124 (Order of Affirmance, February 18, 2004).

that his trial counsel was ineffective for: (1) failing to ensure that Mlacnik received a speedy trial; (2) waiving Mlacnik's preliminary hearing without his consent; and (3) failing to properly advise Mlacnik of his right to testify and preventing Mlacnik from testifying at trial.

The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.² The district court's factual findings regarding claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.³ Mlacnik has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Mlacnik has not demonstrated that the district court erred as a matter of law.

Mlacnik also argues that reversal of his convictions is warranted because: (1) he was deprived of his right to speedy trial; (2) the sentence imposed constitutes cruel and unusual punishment; (3) his status as a habitual criminal should have determined by a jury; and (4) the district court erred in adjudicating him as a habitual criminal because his prior offenses were non-violent. The district court did not err in refusing to consider the merits of Mlacnik's contentions because he waived his right to raise these issues by failing to pursue them on direct appeal,⁴ and

²466 U.S. 668 (1984).

³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

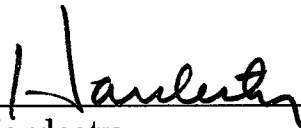
⁴See NRS 34.810(1)(b); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in

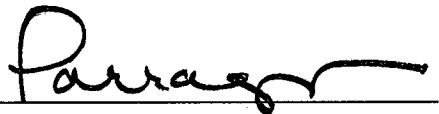
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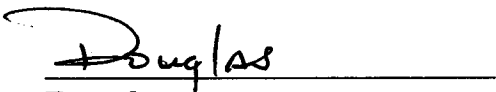
Mlacnik had not demonstrated good cause for raising claims that could have been raised in earlier proceedings.⁵

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Connie J. Steinheimer, District Judge
Thomas L. Qualls
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

⁵See NRS 34.810(3).