

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENEFORD R. WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49074

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On September 30, 2005, the district court convicted appellant, pursuant to a guilty plea, of unlawful sale of a controlled substance. The district court sentenced appellant to serve a term of 28 to 72 months in the Nevada State Prison. Appellant's sentence was suspended and appellant was placed on probation for an indefinite term not to exceed five years. Appellant did not file a direct appeal. On November 30, 2005, the district court entered an order revoking appellant's probation, reinstating the original sentence, and giving appellant 88 days of credit for time served. This court affirmed the revocation of appellant's probation on appeal.¹

On June 20, 2006, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition, and appellant filed an opposition to

¹Washington v. State, Docket No. 46527 (Order of Affirmance, May 2, 2006).

the motion to dismiss. 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 29, 2007, the district court dismissed appellant's petition. This appeal followed.

In his petition, appellant claimed that the district court abused its discretion when revoking his probation. This court considered and rejected this claim on appeal from the order revoking appellant's probation.² Appellant was prohibited by the doctrine of the law of the case from reraising this claim.³ Therefore, we conclude the district court did not err in denying this claim.

Next, appellant claimed that he received ineffective assistance of probation revocation counsel. Preliminarily, we note that this court has recognized that an ineffective assistance of counsel claim will lie only where the defendant has a constitutional or statutory right to the appointment of counsel.⁴ In the context of probation revocation proceedings, counsel is constitutionally required if the probationer requests counsel and makes a colorable claim that (1) he did not commit the alleged violations, or (2) that there are justifying or mitigating circumstances for the violation which make revocation inappropriate and these circumstances are difficult or complex to present.⁵ It appears that

²Id.

³See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁴McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996).

⁵Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973); Fairchild v. Warden, 89 Nev. 524, 516 P.2d 106 (1973) (adopting the approach set forth in Gagnon v. Scarpelli).

the district court conceded that appellant was entitled to the effective assistance of counsel because the district court reviewed appellant's claims of ineffective assistance of counsel without any reference as to whether appellant was entitled to the effective assistance of counsel in the probation revocation proceedings. Therefore, appellant's ineffective assistance of counsel claims will be reviewed on the merits.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that 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 of a different result in the proceedings.⁶ The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.⁷

First, appellant claimed that his counsel was ineffective for failing to move to suppress alleged, but unproven, criminal charges against him. Appellant asserted that if the district court had not considered the unproven charges at his probation revocation hearing, he likely would not have had his probation revoked.

Appellant failed to demonstrate prejudice. The record reveals that the State sought revocation of appellant's probation based on six different violations; the unproven criminal charges only comprised one of the violations alleged by the State. The remaining violations were (1) appellant failed to report to the Division of Parole and Probation

⁶Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁷Strickland, 466 U.S. at 697.

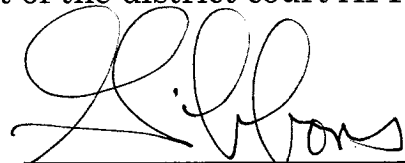
("Division") as required, (2) appellant left an in-patient treatment center without prior approval of the Division and failed to maintain an accurate address with the Division, (3) appellant was not employed at the time of his last contact with the Division, (4) appellant failed to pay mandatory supervision fees, and (5) appellant failed to resolve his outstanding warrants. At the probation revocation proceeding, appellant's counsel informed the district court that all of the unproven criminal charges had been dismissed, and appellant's counsel extensively explained the circumstances regarding the criminal charges. The remaining probation violations were sufficient to establish that appellant's conduct violated the conditions of probation. Thus, even if appellant's counsel had successfully sought suppression of the unproven criminal charges, appellant failed to demonstrate that he would not have had his probation revoked. Therefore, we conclude the district court did not err by denying this claim.

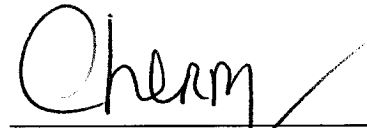
Second, appellant claimed that his counsel was ineffective for failing to be prepared for the revocation hearing. Appellant asserted that his counsel should have reviewed his file and known that his probation revocation judge was not the same judge who initially sentenced him and granted him probation. Appellant claimed that had the district court judge known this information, the judge would not have relied upon a false memory as the basis for revoking his probation.


Appellant failed to demonstrate prejudice. At the probation revocation hearing, after the judge made a statement about the sentencing hearing, appellant corrected the judge and informed the judge that he did not sentence appellant. Appellant failed to demonstrate that any additional argument by counsel regarding which judge sentenced appellant would have altered the outcome of the proceedings. Therefore, we conclude the district court did not err by denying this claim.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁹


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Robert H. Perry, District Judge
Reneford R. Washington
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁹We 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.