

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC CHILDRESS A/K/A ERIC CRAIG
CHILDRESS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49199

FILED

SEP 25 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Donald M. Mosley, Judge.

On April 12, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary and one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of 60 to 180 months in the Nevada State Prison. No direct appeal was taken.

On December 27, 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 conduct an evidentiary hearing. On March 14, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective for failing to object to the fact that the decision of whether to adjudicate appellant as a habitual criminal was not presented to a jury in

violation of Apprendi v. New Jersey.¹ Appellant further claimed that his trial counsel failed to argue that the prior convictions were stale and trivial.

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 was a reasonable probability of a different outcome.² The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.³

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate that his trial counsel was ineffective in this regard. This court recently clarified that the discretion in habitual criminal adjudications relates to the discretion to dismiss a count, which does not serve to increase the punishment, and thus, the district court could sentence a defendant as a habitual criminal without submission of the issue before a jury upon presentation and proof of the requisite number of

¹530 U.S. 466 (2000). To the extent that appellant raised these claims independently from his ineffective assistance of counsel claim, these claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a).

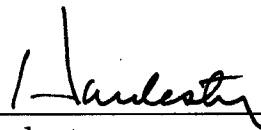
²Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).


³Strickland, 466 U.S. at 697.

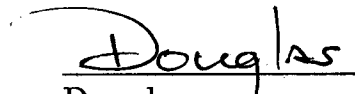
prior convictions.⁴ The State presented proof of six prior felony convictions, and thus the requirements of NRS 207.010(1)(a) were satisfied. NRS 207.010 makes no specific allowance for stale or trivial prior felony convictions.⁵ Therefore, appellant failed to demonstrate that his trial counsel was ineffective in this regard, and we affirm the order of the district court denying appellant's petition.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

⁴O'Neill v. State, 123 Nev. ___, 153 P.3d 38 (2007).

⁵Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996).

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Eric Craig Childress
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk