

IN THE SUPREME COURT OF THE STATE OF NEVADA

PIERCE JONES A/K/A PIERCE  
JERROL JONES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49287

**FILED**

JAN 08 2008

FRADIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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; Joseph T. Bonaventure, Judge.

On December 28, 2005, appellant was convicted, pursuant to a guilty plea, of one count of robbery. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of five to twenty years in the Nevada State Prison. No direct appeal was taken.

On December 7, 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 26, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must

demonstrate that counsel's performance fell below an objective standard of reasonableness.<sup>1</sup> A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the results of the proceedings would have been different.<sup>2</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>3</sup>

First, appellant claimed that his trial counsel was ineffective for failing to object to his being sentenced as a habitual criminal. Appellant failed to demonstrate that his trial counsel's performance was deficient. Appellant failed to set forth any grounds upon which trial counsel should have objected to his being sentenced as a habitual criminal. Importantly, a review of the record reveals that appellant's sentence was legally supportable. In his guilty plea agreement, appellant was informed of the potential sentence for small habitual criminal treatment. Four certified judgments of conviction were entered into evidence at the sentencing hearing. Appellant stipulated to adjudication under the small habitual criminal statute. Under these circumstances, appellant failed to demonstrate that the proceedings would have been different if his counsel had objected to his being sentenced under the small habitual criminal

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<sup>1</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>2</sup>Id.

<sup>3</sup>Strickland, 466 U.S. at 697.

statute.<sup>4</sup> Therefore, appellant's trial counsel was not ineffective, and the district court did not err in denying appellant's claim.

Second, appellant claimed that his trial counsel was ineffective for failing to request a jury determination, pursuant to Apprendi v. New Jersey, on the issue of whether appellant was a habitual criminal.<sup>5</sup> Appellant failed to demonstrate that his trial counsel's performance was deficient. As this court recently noted in O'Neill v. State, NRS 207.010 comports with Apprendi because NRS 207.010 does not require the district court to find any facts beyond prior convictions before sentencing a defendant as a habitual criminal.<sup>6</sup> In O'Neill, this court held that the only discretionary aspect of NRS 207.010 relates to the discretion to dismiss a count, which does not serve to increase the punishment; thus, the district court could sentence appellant as a habitual criminal without submission of the issue before a jury upon presentation and proof of the requisite number of prior convictions.<sup>7</sup> Therefore, the district court did not err in denying appellant's claim.

Next, appellant claimed that the district court sentenced him as a habitual criminal but failed to sentence him on the crime charged and that he was denied his right to have a jury determine the issue of habitual

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<sup>4</sup>Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (noting that trial counsel need not lodge futile objections to avoid ineffective assistance of counsel claims).

<sup>5</sup>530 U.S. 466 (2000).

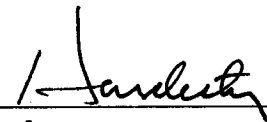
<sup>6</sup>O'Neill v. State, 123 Nev. \_\_\_, \_\_\_, 153 P.3d 38, 43 (2007).

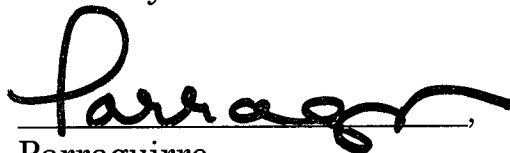
<sup>7</sup>Id.

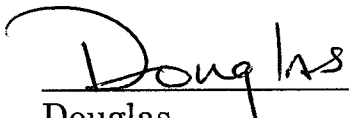
criminality. These claims are outside the scope of claims permissible in a petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.<sup>8</sup> Therefore the district court did not err in denying these claims.

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.<sup>9</sup> Accordingly, we affirm the order of the district court, and

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Eighth Judicial District Court Dept. 6, District Judge  
Pierce Jones  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>8</sup>NRS 34.810(1)(a).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).