IN THE SUPREME COURT OF THE STATE OF NEVADA

CLINTON GARY GREENE,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K. MCDANIEL,
Respondent.

No. 49653

FILED

JUL 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On August 13, 2004, the district court convicted appellant, pursuant to a jury verdict, of one count of burglary, four counts of robbery with the use of a deadly weapon, three counts of false imprisonment with the use of a deadly weapon, and one count of battery with the use of a deadly weapon causing substantial bodily harm. The district court sentenced appellant to serve a terms totaling 41 years and 8 months to

140 years in the Nevada State Prison. This court affirmed the judgment of conviction on appeal.[1] The remittitur issued on March 22, 2005.

On October 26, 2005, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed an answer. 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 April 30, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the district court erred in instructing the jury that its verdict did not have to be unanimous concerning the theory of the crime. This court rejected this claim on direct appeal. The doctrine of the law of the case prevents further litigation of this issue and cannot be avoided by a more detailed and focused argument.[2] Therefore, the district court did not err in denying this claim.

Next, appellant contended that his trial counsel was ineffective. 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 prejudice such that counsel's errors were

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[1]Greene v. State, Docket No. 43759 (Order of Affirmance, February 23, 2005)

[2]Hall v. State, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975).

so severe that they rendered the jury's verdict unreliable.[3] The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.[4]

First, appellant claimed that his trial counsel was ineffective for failing to move to suppress statements obtained from appellant in violation of Miranda v. Arizona.[5] Appellant failed to demonstrate that his counsel was deficient or that he was prejudiced. Appellant did not identify the particular statement he contended should have been suppressed and failed to describe the circumstances during which he made the statement.[6] Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to move to suppress appellant's arrest and evidence seized as a result of that arrest. Specifically, appellant claimed that he was on tribal lands and the Washoe County Sheriff's officers did not have jurisdiction to arrest him and the pretextual arrest by the tribal police was not supported by probable cause. Appellant failed to demonstrate that his

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[3]Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland).

[4]Strickland, 466 U.S. at 697.

[5]384 U.S. 436 (1966).

[6]Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

trial counsel was deficient or that he was prejudiced. The State did not introduce any evidence seized from appellant's person during the arrest or from the home at which he was arrested. Further, while the State did introduce evidence seized from the car parked in front of the home at which appellant was arrested at trial, appellant did not assert that he owned the car or otherwise had standing to challenge the search of the car.[7] Thus, appellant did not demonstrate that a motion to suppress would have been successful or would have altered the outcome of the trial.[8] Moreover, even if appellant's arrest was not supported by probable cause, that fact would not have barred the State from prosecuting appellant.[9] Therefore, the district court did not err in denying this claim.[10]

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[7]See Scott v. State, 110 Nev. 622, 628, 877 P.2d 503, 507-08 (1994) (providing that an individual may have standing to challenge the search of an automobile if that person owned or was otherwise in lawful possession of the automobile).

[8]See Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996) (providing that a petitioner may demonstrate prejudice for a claim of ineffective assistance of counsel based on counsel's failure to seek suppression of illegally seized evidence where the petitioner shows "that the claim was meritorious and that there was a reasonable likelihood that the exclusion of the evidence would have changed the result of a trial").

[9]See Graves v. State, 112 Nev. 118, 129, 912 P.2d 234, 241 (1996) ("[A]n illegal arrest alone does not entitle a defendant to have a conviction set aside.") (citing United States v. Crews, 445 U.S. 463, 474 (1980)); see also Biondi v. State, 101 Nev. 252, 255, 699 P.2d 1062, 1064 (1985)

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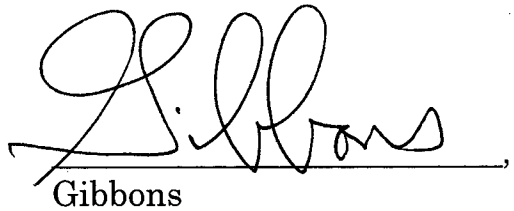
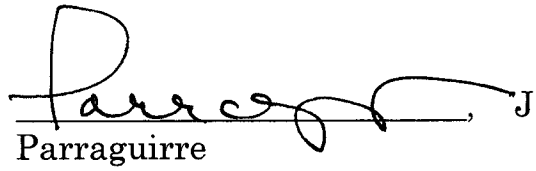
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[11] Accordingly, we

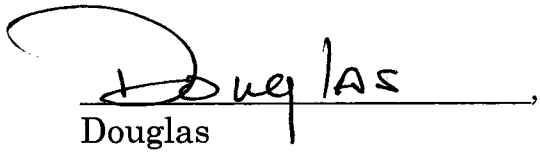
ORDER the judgment of the district court AFFIRMED.



_____, C. J.
Gibbons



_____, J.
Parraguirre



_____, J.
Douglas

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(providing that procedural violations by California authorities did not bar Nevada from prosecuting appellant after California authorities transferred defendant to Nevada authorities) (citing Frisbie v. Collins, 342 U.S. 519, 522 (1952)).

[10]To the extent that appellant claimed that his counsel was ineffective for failing to investigate the jurisdiction issue, appellant failed to demonstrate that he was prejudiced for the reasons set forth above.

[11]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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