IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM E. SCHOEB, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49752

FILED

DEC 10 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
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. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On March 7, 2006, appellant William E. Schoeb, Jr., was convicted, pursuant to a guilty plea, of one count each of robbery and attempted grand larceny of a motor vehicle. The district court sentenced Schoeb to serve a prison term of 26 to 120 months for the robbery count and a consecutive prison term of 12 to 34 months for the attempted grand larceny count. Schoeb filed a direct appeal, and this court affirmed the judgment of conviction.[1]

On October 30, 2006, Schoeb filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Schoeb, and counsel filed a supplement to the petition. The State opposed the petition. After conducting an evidentiary hearing, the district court denied the petition. Schoeb filed this timely appeal.

[1]Schoeb v. State, Docket No. 46997 (Order of Affirmance, June 29, 2006).

Schoeb contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, Schoeb argues that trial counsel was ineffective for failing to: (1) adequately represent Schoeb at the adult certification proceedings; (2) investigate Schoeb's legal competency and history of mental illness; and (3) investigate the facts of the case and obtain discovery. Further, Schoeb contends that appellate counsel was ineffective for failing to: (1) challenge the district court's adult certification ruling; and (2) allege that Schoeb's double jeopardy rights were violated. Finally, Schoeb contends that the district court erred in finding that his guilty plea was knowing, voluntary and intelligent. In particular, Schoeb contends that the district court did not properly canvass him and advise him of the elements of the charged crimes.

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

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[2]466 U.S. 668 (1984).

[3]See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

The record indicates that Schoeb signed a written plea agreement and was thoroughly canvassed by the district court. We note that Schoeb received a substantial benefit under the plea bargain in that the State dismissed thirteen other felony counts. At the post-conviction hearing, counsel testified that Schoeb was satisfied with the plea bargain, did not want to challenge the adult certification proceedings or the validity of the plea, and was not convicted twice for the same crime. Moreover, the majority of Schoeb's claims of ineffective assistance of counsel lack adequate specificity: he does not describe the additional evidence counsel should have presented at the adult certification proceedings, and he does not identify the redundant conviction, the evidence of mental illness or the exculpatory evidence that counsel would have discovered with further investigation.[4] Accordingly, we conclude that the district court did not abuse its discretion in denying the petition.

Schoeb also argues that his sentence was disproportionate to the sentences received by his co-defendants, the adult certification was unconstitutional, and his conviction violated his constitutional double jeopardy rights. The district court did not err in refusing to consider the merits of Schoeb's claims because he waived these issues by failing to pursue them in his direct appeal.[5] Additionally, Schoeb contends that the

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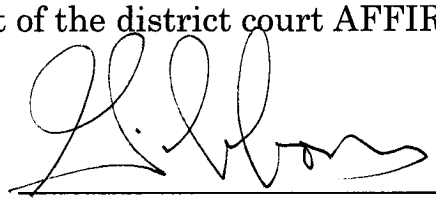
[4]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

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

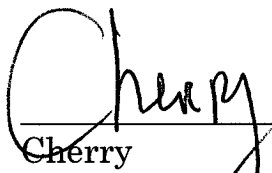
sentence imposed constitutes cruel and unusual punishment. The district court did not err in refusing to consider the merits of Schoeb's contention because the underlying claim involving the severity of his sentence was fully litigated in his direct appeal and is, therefore, barred by the doctrine of the law of the case.[6]

Having considered Schoeb's contentions and concluded that they lack merit, we

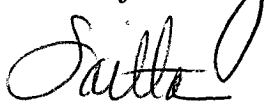
ORDER the judgment of the district court AFFIRMED.



_____, J.
Gibbons



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Andrew J. Puccinelli, District Judge
Matthew J. Stermitz
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk

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