

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD LEE BEATY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50476

FILED

MAR 10 2008

TRACEE K. LINDEMAN
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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David Wall, Judge.

On May 16, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced appellant to serve a term of 12 to 48 months in the Nevada State Prison. No direct appeal was taken.

On July 18, 2007, 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 October 11, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel because counsel "barely said anything at all to the judge to help" appellant obtain drug addiction treatment instead of a prison sentence. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice so severe

that there was a reasonable probability of a different outcome in the proceedings.¹ The court need not address both the deficiency and prejudice component of the inquiry if the petitioner makes an insufficient showing on either one.² Here, counsel's performance was not deficient. While appellant would have preferred that counsel provide a more vigorous presentation of appellant's drug problem, appellant acknowledged that counsel did inform the court of this issue. Counsel acted reasonably and effectively by informing the district court of appellant's drug addiction. Therefore, we conclude that the district court did not err in denying this claim.

It appears that appellant also claimed that his sentence should be modified because he did not need to be confined in a prison; rather, he required a treatment program for his drug addiction and his Presentence Investigation Report incorrectly stated the number of his prior convictions and parole violations. Appellant's claims regarding his sentence fell outside the scope of claims permissible in a habeas corpus petition challenging a judgment of conviction based on a guilty plea.³ Moreover, as a separate and independent ground to deny relief, appellant's claims lacked merit. Appellant's claim regarding a drug treatment program fell outside the scope of claims permissible in a motion to modify a sentence.⁴ Further, appellant failed to substantiate his allegation that

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

²See Strickland, 466 U.S. at 697.

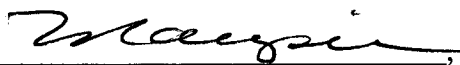
³See NRS 34.810(1)(a).

⁴Edwards v. State, 112 Nev. 704, 708-09 n.2, 918 P.2d 321, 324 n.2 (1996).

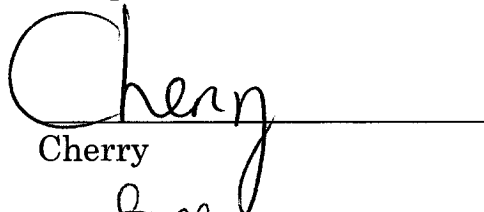
his Presentence Investigation Report contained multiple errors and failed to show that the district court's sentence was based, in part, on errors contained in the report.⁵ Therefore, we conclude that the district court did not err in denying these claims.

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁷

 J.

Maupin

 J.

Cherry

 J.

Saitta

⁵See Passanisi v. State, 108 Nev. 318, 322-23, 831 P.2d 1371, 1373-74 (1992).

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

⁷We 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.

cc: Hon. David Wall, District Judge
Edward Lee Beaty Jr.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk