

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD STEVEN ELLISTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50605

FILED

MAR 06 2008

TRACIE K. LINDEMAN
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. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

On January 20, 2006, appellant Ronald Steven Elliston was convicted, pursuant to a guilty plea, of five counts of burglary. The district court sentenced Elliston to serve five prison terms of 16 to 72 months. The district court ordered three of the prison terms to run consecutively and two of the prison terms to run concurrently. Elliston did not file a direct appeal.

On September 27, 2006, Elliston filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Elliston, and counsel filed a supplement to the petition. The State filed a motion for partial dismissal of the petition. Elliston filed a response to the motion for partial dismissal, and the State filed a reply to Elliston's response. After conducting an evidentiary hearing, the district court denied the petition. Elliston filed this timely appeal.

Elliston contends that the district court erred in rejecting his claim of ineffective assistance of counsel. Specifically, Elliston argues that defense counsel was ineffective at sentencing for failing to object when the prosecutor breached the plea agreement by referring to Elliston as a “classic habitual criminal.”¹

The district court found that counsel was not ineffective under the standard set forth in Strickland v. Washington.² In particular, the district court found that defense counsel was not deficient at the sentencing hearing for failing to object because the prosecutor did not breach the spirit or the terms of the plea agreement. The district court’s factual findings regarding claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.³ Elliston has not demonstrated that the district court’s findings of fact are not supported by substantial evidence. Moreover, Elliston has not demonstrated that the district court erred as a matter of law.⁴

¹To the extent that Elliston independently raises the claim underlying his ineffective assistance of counsel claim, Elliston waived this issue by failing to pursue it in a direct appeal. See NRS 34.810(1)(a); 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 in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

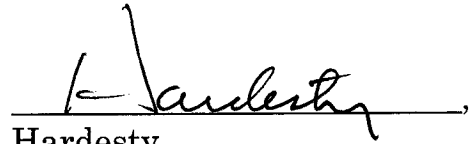
²466 U.S. 668 (1984).

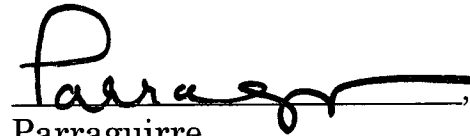
³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

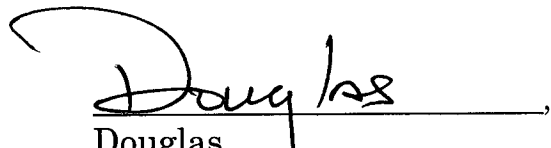
⁴See Kluttz v. Warden, 99 Nev. 681, 669 P.2d 244 (1983).

Having considered Elliston's contention and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.


Hardesty, J.


Parraguirre, J.


Douglas, J.

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