

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM M. ALBERTER A/K/A  
WILLIAM LYNN FIELD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50659

**FILED**

AUG 25 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 a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On July 6, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a term of 60 to 150 months in the Nevada State Prison. No direct appeal was taken.

On July 24, 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 November 29, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. 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 there was a reasonable probability of a different outcome in the proceedings.<sup>1</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>2</sup>

First, appellant claimed that his trial counsel was ineffective for allowing the district court to sentence appellant using a four-year old presentence investigation report that had been prepared in a case in the Second Judicial District Court. Appellant claimed that the report could have been based upon mistaken assumptions about his criminal record that worked to his extreme detriment. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. NRS 176.135(3) permits a district court to use a presentence investigation report prepared in an earlier case that is not more than five years old. The fact that the presentence investigation report was prepared for a case in the Second Judicial District Court whereas the conviction in the instant case arose from the Eighth Judicial District Court is a

---

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

<sup>2</sup>Strickland, 466 U.S. at 697.

distinction without a difference as the Division of Parole and Probation, a state-wide division, prepared the report.<sup>3</sup> Appellant further failed to specifically identify any false information in the presentence investigation report or demonstrate how the allegedly false information impacted the sentencing decision. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to object to his habitual criminal adjudication. Specifically, appellant claimed that trial counsel should have objected to the district court's use of the presentence investigation report as proof of the prior convictions and the State's failure to present certified copies of the prior judgments of conviction. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. A review of the record on appeal reveals that three prior judgments of conviction were presented and filed at the sentencing hearing. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for advising him that he would receive a minimum sentence for grand larceny, that there was almost no chance of habitual criminal adjudication, and that he had the potential to receive probation if he entered a guilty plea. Appellant failed to demonstrate that he was prejudiced. During the guilty plea canvass, appellant was informed of the

---

<sup>3</sup>See NRS 176.002; NRS 176.135.

sentencing range for grand larceny. Appellant was further informed of the possibility of habitual criminal adjudication and the possible penalties. Appellant was eligible for probation for the crime of grand larceny.<sup>4</sup> Appellant affirmatively acknowledged that matters of sentencing were entirely left up to the district court. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his sentence was in violation of due process because: (1) he and his trial counsel were not served with notice of intent to seek habitual criminal adjudication; (2) his habitual criminal adjudication was an abuse of discretion because his crime was a non-violent property crime; (3) certified copies of the prior judgments of conviction were not presented to the district court; and (4) the district court failed to make a just and proper determination. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.<sup>5</sup> Therefore, the district court did not err in denying these claims.

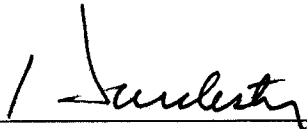
---

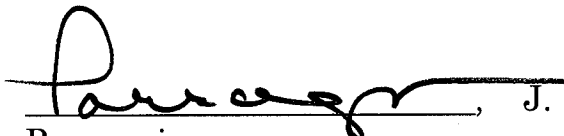
<sup>4</sup>See NRS 176A.100(1) (setting forth that probation is not available to those adjudicated a habitual criminal pursuant to NRS 207.010); NRS 205.222 (setting forth the penalties for grand larceny).

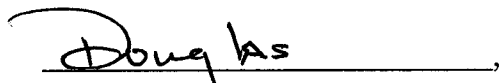
<sup>5</sup>See NRS 34.810(1)(a).

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

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

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

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

cc: Hon. Elizabeth Goff Gonzalez, District Judge

---

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

<sup>7</sup>We 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. We further deny appellant's motion to consolidate appeals.

William M. Alberter  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk