

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL WELLS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50780

**FILED**

APR 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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On June 29, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of possession of a stolen vehicle. 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 October 11, 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 January 14, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner

must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>1</sup> To establish prejudice based on the deficient assistance of counsel at sentencing, a petitioner must show that but for counsel's mistakes, there is a reasonable probability that the sentence imposed would have been different.<sup>2</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>3</sup>

Appellant first claimed that his counsel was ineffective for stipulating to appellant's adjudication as a "small" habitual criminal and allowing appellant to enter a guilty plea stipulating to such adjudication. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Because appellant had more than three prior felony convictions, he was eligible for "large" habitual treatment under NRS 207.010. Moreover, based on the plea agreement, the State agreed that it would not oppose prison time running concurrent between this and another case. Accordingly, appellant received a substantial benefit by entry of his plea, and his counsel was not unreasonable for recommending that appellant enter a plea for a reduced

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<sup>1</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>2</sup>Strickland v. Washington, 466 U.S. 668, 694 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984)

<sup>3</sup>Strickland, 466 U.S. at 697.

sentence. Therefore, we conclude that the district court did not err in denying this claim.

Appellant next claimed that his counsel was ineffective for misleading appellant to believe that the offense of possession of a stolen vehicle was non-probational. Appellant noted that possession of a stolen vehicle is a probational offense,<sup>4</sup> but that the guilty plea agreement provided that “I understand that I am not eligible for probation for the offense to which I am pleading guilty.” Appellant failed to establish that his counsel was unreasonable or that he was prejudiced. While the primary offense of possession of a stolen vehicle is probational, appellant was properly informed in the guilty plea agreement that he was not eligible for probation by virtue of stipulating to habitual criminal adjudication.<sup>5</sup> Therefore, we conclude that the district court did not err in denying this claim.

Appellant next claimed that his counsel was ineffective for failing to object to the district court’s failure to validate his prior convictions for purposes of habitual criminal adjudication. Appellant claimed that the district court improperly relied on a stipulation to habitual criminal treatment. Appellant failed to demonstrate that his counsel was ineffective in this regard. First, appellant’s claim is belied by the record.<sup>6</sup> The record contains copies of appellant’s judgment of convictions marked as proposed State exhibits. Moreover, the record

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<sup>4</sup>See NRS 205.273; NRS 193.130; NRS 176A.100.


<sup>5</sup>See NRS 207.010(1)(a).

<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

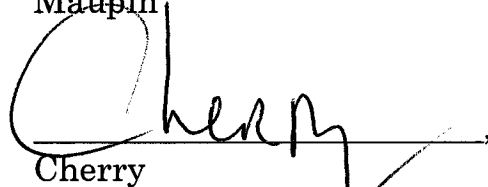
establishes that appellant did more than stipulate to habitual criminal status; appellant waived proof of the prior convictions in the instant case.<sup>7</sup> A notice of intent to seek habitual criminal punishment set forth the prior felony convictions supporting the habitual criminal adjudication. In his guilty plea agreement, appellant stipulated to habitual criminal treatment, and appellant was informed of the potential sentence for small habitual criminal treatment. The presentence report described the prior convictions. On the basis of these facts, we conclude that appellant stipulated to the four prior convictions. Therefore, we conclude that the district court did not err in denying this claim.

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>8</sup> Accordingly, we

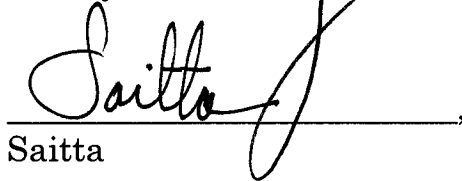
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

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<sup>7</sup>See Hodges v. State, 119 Nev. 479, 78 P.3d 67 (2003).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge  
Robert Earl Wells  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk