

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY HERRICK BENJAMIN,

No. 34592

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 21 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

Appellant first contends that the district court employed an incorrect burden of proof in rejecting appellant's claims of ineffective assistance of counsel. Having reviewed the documents submitted with this appeal, we conclude that even assuming, without deciding, that the district court employed the wrong burden of proof, this did not affect the court's conclusions in this case. The district court found that trial counsel explained the negotiations to appellant, that appellant understood the explanation, and that appellant's testimony to the contrary was not credible. Therefore, under any burden of proof, appellant failed to demonstrate that trial counsel's performance fell below an objective standard of reasonableness. See Hill v. Lockhart, 474 U.S. 52 (1985).

Appellant also contends that the district court erred by concluding that appellant had no right to withdraw his nolo

testified that appellant never requested to withdraw his plea until after sentencing. Under the circumstances, we conclude that this contention does not warrant relief.

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

ORDER this appeal dismissed.

Young J.
Young

Agosti J.
Agosti

Leavitt J.
Leavitt

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk