

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNY L. HUDSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51043

**FILED**

JUL 11 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; Sally L. Loehrer, Judge.

On April 18, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted burglary and one count of possession of burglary tools. The district court adjudicated appellant a small habitual criminal on the attempted burglary count and sentenced appellant to serve a term of 72 to 200 months in the Nevada State Prison, with a concurrent term of 12 months for the burglary tools count. No direct appeal was taken.

On November 5, 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 24, 2008, the district court denied appellant's petition.<sup>1</sup> This appeal followed.

In his petition, appellant claimed: (1) he could not be adjudicated a habitual criminal based on a stipulation to the prior convictions; and (2) the State failed to present proof of the prior convictions. 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>2</sup> Therefore, we conclude that the district court did not err in denying these claims.

Next, appellant claimed that he received ineffective assistance of trial counsel.<sup>3</sup> 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>4</sup> The

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<sup>1</sup>A second order was entered on February 6, 2008.

<sup>2</sup>NRS 34.810(1)(a).

<sup>3</sup>To the extent that appellant raised the underlying claims independently from his ineffective assistance of counsel claim, the 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. NRS 34.810(1)(a).

<sup>4</sup>Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984).

court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>5</sup>

Appellant claimed that his trial counsel was ineffective for failing to inform the district court that the prior convictions were problematic. It appears that appellant claimed his prior convictions were problematic because the prior convictions were remote in time and involved nonviolent felonies. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Any objection to the prior convictions on the grounds of remoteness or nonviolence would not have changed the outcome. NRS 207.010 makes no specific allowance for stale or nonviolent prior felony convictions.<sup>6</sup> The State presented proof of six prior felony convictions: (1) 1982 judgment of conviction for attempted burglary; (2) 1984 judgment of conviction for attempted accessory to burglary; (3) 1989 judgment of conviction for attempting to prevent or dissuade a person from testifying or producing evidence; (4) 1989 judgment of conviction for grand larceny; (5) 1994 judgment of conviction for burglary; and (6) 2000 judgment of conviction for two counts of burglary (second offense). Thus, the State presented a sufficient number of prior felony convictions for the small habitual criminal adjudication.<sup>7</sup> Therefore, we conclude that the district court did not err in denying this claim.

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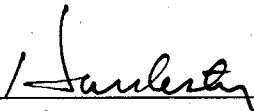
<sup>5</sup>Strickland, 466 U.S. at 697.

<sup>6</sup>Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996).

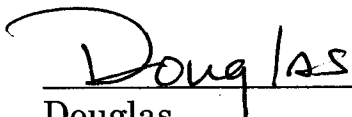
<sup>7</sup>NRS 207.010(1)(a).

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Sally L. Loehrer, District Judge  
Johny L. Hudson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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