

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN RICHARD JAHN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51100

FILED

SEP 09 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; Michelle Leavitt, Judge.

On December 29, 2006, the district court convicted appellant Dean Richard Jahn, pursuant to a guilty plea, of one count of burglary and one count of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve two concurrent terms of 6 to 20 years in the Nevada State Prison. No direct appeal was taken.

On November 29, 2007, appellant filed a 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 March 6, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial 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 counsel's performance fell below an objective

standard of reasonableness,¹ and that, but for counsel's errors, there was a reasonable probability of a different outcome in the proceedings.² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³

First, appellant claimed that his trial counsel was ineffective for failing to challenge his adjudication as a habitual criminal when the State failed to produce three judgments of conviction. Appellant failed to demonstrate that he suffered prejudice. A review of the record reveals that the State presented judgments of convictions for seven previous felonies committed by appellant at the sentencing hearing. Further, during the guilty plea canvass, counsel stated to the district court that appellant had agreed to being adjudicated as a habitual criminal. 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 challenge the habitual criminal proceedings, pursuant to Apprendi v. New Jersey.⁴ Appellant argued that his trial counsel should have argued that appellant was entitled to a jury trial concerning the habitual criminal enhancement. Appellant failed to

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

²See Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

³Strickland, 466 U.S. at 697.

⁴530 U.S. 466 (2000).

demonstrate that his trial counsel was deficient. We have held that a defendant is not entitled to a jury determination of habitual criminality.⁵ Therefore, the district court did not err in denying this claim.⁶

Third, appellant claimed that his trial counsel was ineffective for failing to object when the district court failed to state its findings concerning appellant's adjudication as a habitual criminal. Appellant failed to demonstrate that his trial counsel was deficient or that he suffered prejudice. Appellant agreed to be adjudicated as a habitual criminal pursuant to his guilty plea. During the sentencing hearing, appellant's trial counsel made a statement to the district court asking for leniency in sentencing due to appellant's success in refraining from drug use since the arrest for these charges and appellant's ties to the community. After hearing from the State and appellant, the district court made a finding that it was proper to sentence appellant as a habitual criminal. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to argue that his convictions should not have been considered due to staleness, trivialness, non-violent nature, and remoteness. The habitual criminal statute makes no special allowance for non-violent

⁵See O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007); see also Howard v. State, 83 Nev. 53, 57, 422 P.2d 548, 550 (1967) (holding that the Nevada Constitution does not require that status as a habitual criminal be determined by a jury.).

⁶To the extent that appellant challenged the habitual criminal procedures pursuant to Apprendi v. New Jersey, the challenge is beyond the scope of a post-conviction petition for habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

crimes or for remoteness of the prior convictions; these are merely considerations within the discretion of the district court to dismiss a count of habitual criminality.⁷ Appellant failed to demonstrate that he suffered prejudice. As stated above, appellant agreed to be adjudicated as a habitual criminal pursuant to his guilty plea. Therefore, the district court did not err in denying this claim.

Fifth, appellant claimed that his trial counsel was ineffective for failing to argue that it was an abuse of discretion for the district court to adjudicate him a habitual criminal. Appellant failed to demonstrate that he suffered prejudice. As stated above, the State filed judgments of convictions for seven prior felonies. As such, appellant was eligible for treatment as a habitual criminal pursuant to NRS 207.010. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his trial counsel was ineffective for failing to raise any of the above claims in a direct appeal. Notably, appellant did not file a direct appeal, and thus, he failed to demonstrate his counsel was ineffective for failing to raise these claims on direct appeal.⁸ Appellant also failed to identify any direct appeal claims that had a reasonable likelihood of success.⁹ To the extent appellant claimed that his trial counsel was ineffective for failing to file a direct appeal, appellant did not allege that he asked his counsel to file an appeal

⁷Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992).

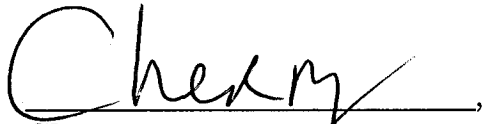
⁸Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

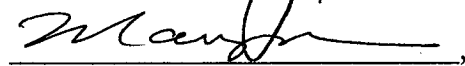
⁹See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).


and his counsel failed to do so.¹⁰ Therefore, 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 oral argument and briefing are unwarranted in this matter.¹¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Cherry, J.


Maupin, J.


Saitta, J.

cc: Hon. Michelle Leavitt, District Judge
Dean Richard Jahn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰Thomas, 115 Nev. at 150, 979 P.2d at 223.

¹¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).