

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK JOSEPH BOOTH,

Appellant,

vs.

WARDEN, NEVADA STATE PRISON-WELLS
CONSERVATION CAMP, DON HELLING,

Respondent.

No. 34615

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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 was originally convicted, pursuant to a guilty plea, of one count of trafficking and one count of possession of a credit card without consent.

On direct appeal, appellant argued that there was no probable cause for the police officer to search his vehicle; that the district court erred in denying a motion to suppress the evidence seized as a result of the search; and that there was no evidence tying appellant to the controlled substances found in the vehicle. This court dismissed the appeal, noting that appellant had waived all the issues raised by pleading guilty. Booth v. State, Docket No. 30560 (Order Dismissing Appeal, November 5, 1997). This court noted in a footnote, however, that even if appellant had not waived the issue of the district court's denial of the motion to suppress, the record indicated that the district court did not err.

Appellant subsequently filed the petition at issue in this appeal, arguing that: (1) counsel was ineffective for failing to present witnesses at sentencing; (2) the guilty plea was not valid because appellant believed that he had

reserved the right to appeal the denial of the motion to suppress; and (3) trial counsel was ineffective for failing to reserve the right to appeal the denial of the motion to suppress. The district court denied the petition on the last two grounds, based on this court's conclusion that the district court did not err by denying the motion to suppress. As to the first ground, the district court conducted an evidentiary hearing, and concluded that appellant's trial counsel was not ineffective.

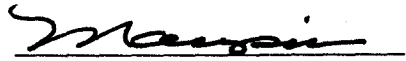
Appellant first contends that the district court erred by concluding that trial counsel was not ineffective at sentencing. To prevail on a claim of ineffective assistance of counsel, appellant must demonstrate that counsel's performance was deficient and that that performance prejudiced appellant at sentencing. *Paine v. State*, 110 Nev. 609, 620, 877 P.2d 1025, 1031 (1994) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). At the evidentiary hearing on appellant's claim, the district court specifically found that counsel's performance was not deficient and that appellant's sentence would not have been any less harsh if trial counsel had taken a different tack. Appellant fails even to allege on appeal that he was prejudiced by counsel's performance, or that the district court erred by finding that he was not prejudiced. We therefore conclude that this contention is without merit.

Appellant also contends that the district court erred by refusing to hold an evidentiary hearing on the issue of appellant's desire to appeal the adverse ruling on the motion to suppress. However, even if appellant was not informed that he was not preserving the right to appeal the suppression ruling, appellant is not entitled to relief. This court specifically concluded that the district court did not

err by denying the motion to suppress, and counsel could therefore not have been ineffective for failing to preserve this issue for appeal. Moreover, assuming that appellant entered his plea based on a belief that the ruling would be reviewed on appeal, appellant's expectation was met, as this court did, in effect, review the claim. In order to be entitled to an evidentiary hearing, appellant must allege specific facts which, if true, would entitle him to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Because appellant would not be entitled to relief, even if his allegations regarding this claim were true, the district court did not err by denying an evidentiary hearing.

Having considered appellant's contentions and concluded that they are without merit, we


ORDER this appeal dismissed.


Maupin

J.


Shearing

J.


Becker

J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk