

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONEL DENAIR PANKEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51806

FILED

ORDER OF AFFIRMANCE

MAY 07 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a district court order denying appellant Ronel Denair Pankey's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Pankey was convicted, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced Pankey to serve a prison term of 35-156 months. This court affirmed Pankey's judgment of conviction and sentence on direct appeal. Pankey v. State, Docket No. 48170 (Order of Affirmance, January 9, 2007).

On April 17, 2007, Pankey filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Pankey and counsel filed a supplement to the petition. The State opposed the petition. The district court conducted an evidentiary hearing and, on May 29, 2008, entered an order denying Pankey's petition. This timely appeal followed.

Pankey contends that the district court erred by denying his petition. Specifically, Pankey claims his guilty plea was invalid because he was led to believe that he was pleading to simple possession and not trafficking. Pankey has never sought to withdraw his guilty plea; instead, he wishes to be resentenced to the lesser offense pursuant to NRS 453.336

(unlawful possession not for purpose of sale). We conclude that Pankey is not entitled to relief.

In its order denying the petition, the district court found that Pankey's "repeated refusal to withdraw his plea tends to negate any claim of prejudice attending his claim of ineffective assistance of counsel and his claim that his plea was not a knowing and voluntary plea. See Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366 (1985)." See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court also found that Pankey's reliance on NRS 175.201 was misplaced. The district court's findings are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Pankey has not demonstrated that the district court's findings are not supported by substantial evidence or are clearly wrong. Moreover, Pankey has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err by denying Pankey's petition.

Finally, we note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that Pankey was convicted and sentenced pursuant to NRS 453.3385(1), when, in fact, he was convicted of level-two trafficking in a controlled substance and sentenced pursuant to NRS 453.3385(2). Following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical error in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).

Having considered Pankey's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

1 Hardesty, C. J.
Hardesty

Parraguirre, J.
Parraguirre

Pickering, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
O'Mara Law Firm, P.C.
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk