IN THE SUPREME COURT OF THE STATE OF NEVADA

FOREST S. MCGEE,

Appellant,

vs.

WARDEN, LOVELOCK CORRECTIONAL CENTER, JACKIE CRAWFORD,

Respondent.

No. 34676

FILED

DEC 03 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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 initially charged in the juvenile division of the district court, but was then automatically certified as an adult pursuant to NRS 62.040. On August 7, 1997, appellant was convicted, pursuant to a guilty plea, of two (2) counts of robbery with the use of a deadly weapon. The district court sentenced appellant to four (4) consecutive terms of thirty (30) to one hundred fifty-six (156) months in the Nevada State Prison. Appellant did not file a direct appeal. On July 31, 1998, appellant filed a post-conviction petition for a writ of habeas corpus. On July 15, 1999, the district court denied appellant's petition. This appeal followed.

Appellant first argues that the district court erred in automatically certifying him as an adult pursuant to NRS 62.040(1)(b)(2). Appellant contends the words "alleged offense" in subsection 2 refer to the previously adjudicated delinquent act mentioned earlier in the same subsection. We disagree.

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Under the pre-1997 version of NRS 62.040(1)(b)(2)[1], the juvenile court does not have jurisdiction over a case where (1) the juvenile has previously been adjudicated for an act which would have been a felony if committed by an adult, and (2) the juvenile is presently alleged to have committed an offense involving a deadly weapon at a time when he was at least sixteen (16) years old. Appellant's reading of this statute is erroneous as he interprets "alleged offense" to mean the previously adjudicated delinquent act. We conclude that the word "alleged" clearly refers to the present offense charged for which the defendant has not yet been convicted; it does not refer to a juvenile act for which the defendant has already been adjudicated. Therefore, we conclude that appellant's argument is without merit.

Appellant also suggests that the district court erred in not determining whether the prior conviction "satisfied the spirit of constitutional principles." However, this argument is not supported by any authority whatsoever, and therefore, we need not consider it. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Further, the prior adjudication was used to establish jurisdiction, not enhance appellant's sentence. Therefore, we conclude that this argument is without merit.

Third, appellant argues that his counsel was ineffective at sentencing because he failed to present evidence of appellant's drug addiction, psychological problems, and that appellant was raised among drug addicts.

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[1]Because the offense was committed prior to October 1, 1997, the district court applied the version of the statute prior to the 1997 amendments.

This court has held that "a district court's findings of fact with respect to claims of ineffective assistance of counsel are entitled to deference upon appellate review." Hill v. State, 114 Nev. 169, 175, 953 P.2d 1077, 1082, cert. denied 119 S. Ct. 594 (1998). Further, for a claim of ineffective assistance to be successful, petitioner must demonstrate that (1) his counsel's performance fell below an objective standard of reasonableness and (2) such performance prejudiced petitioner's defense. Id. at 176, 953 P.2d at 1082 (citing Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994)).

At the evidentiary hearing on appellant's petition for a writ of habeas corpus, the district court heard the aforementioned evidence of appellant's addiction, psychological problems, and poor upbringing. The district court determined that counsel did not act unreasonably by not presenting this testimony and such testimony would not have changed the district court's decision regarding appellant's sentence. Giving the appropriate deference to the findings of the district court, we conclude that appellant fails to satisfy the two-prong test for unreasonableness and prejudice. See Hill, 114 Nev. at 175, 953 P.2d at 1082.

Appellant also claims that he was not informed of his right to appeal his conviction. At the habeas proceeding, the district court provided appellant an opportunity to present any arguments appellant could have presented on direct appeal. See Lozada, 110 Nev. at 359, 871 P.2d at 950. Appellant alleged the aforementioned issues involving certification and sentencing. After hearing appellant's arguments, the district

court determined they were without merit. After a careful review of the record, we agree with the district court.

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

ORDER this appeal dismissed.

Rose, C.J.

Young, J.

Leavitt, J.

cc: Hon. Jerome M. Polaha, District Judge
Attorney General
Washoe County District Attorney
Karla K. Butko
Washoe County Clerk