

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHANE GUY DAUGHERTY,
Appellant,
vs.
THE STATE OF NEVADA AND
WARDEN, NEVADA STATE PRISON,
BILL DONAT,
Respondents.

No. 53008

FILED

FEB 03 2010

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 dismissing a timely post-conviction petition for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In his petition, filed on March 31, 2008, appellant raised six claims. Appellant's first four claims—the district court erred by violating the double jeopardy clause and other constitutional rights at sentencing; the district court erred by ordering restitution based solely on the presentence report; the presentence report contained errors; and the district court erred by ordering that a DNA sample be taken because appellant had previously provided a DNA sample on a different felony conviction—are not properly raised in a post-conviction petition for a writ of

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

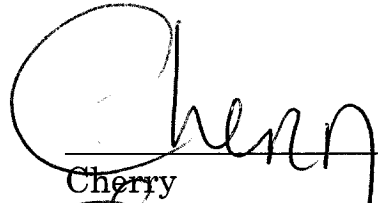
habeas corpus challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying these claims.

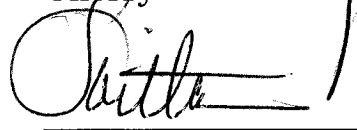
Appellant next argued that he received ineffective assistance of trial counsel because counsel conspired with the State to ensure he received a heftier sentence and failed to raise a double jeopardy challenge when the sentencing court corrected an initially illegal sentence shortly after appellant was escorted from the courtroom. Appellant failed to demonstrate that counsel's performance fell below an objective standard of reasonableness, see Strickland v. Washington, 466 U.S. 668, 691 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984), because double jeopardy was not implicated, see Miranda v. State, 114 Nev. 385, 386, 956 P.2d 1377, 1378 (1998) (holding that when a sentence is illegal a defendant has no reasonable expectation that the sentence is final, a requirement to claim a double jeopardy violation). Further, appellant did not demonstrate a conspiracy between trial counsel, the State, and the district court. Appellant also failed to demonstrate a reasonable probability of a different outcome had trial counsel objected to the correction. See Strickland, 466 U.S. at 694.

Finally, appellant claimed he received ineffective assistance of appellate counsel because counsel failed to federalize his claims on appeal. Appellant failed to demonstrate "that the omitted issue would have a reasonable probability of success on appeal." Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellant failed to demonstrate that he would have gained a more favorable standard of review on direct appeal had his appellate counsel federalized the arguments. See

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Browning v. State, 120 Nev. 347, 365, 91 P.3d 39, 52 (2004). Therefore,
the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____ J.
Cherry

 _____ J.
Saitta

 _____ J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Shane Guy Daugherty
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk