

IN THE SUPREME COURT OF THE STATE OF NEVADA

KURT D. HUEBNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 34919

**FILED**

JUN 20 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Subad*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus and an order denying a motion for an evidentiary hearing.

On June 10, 1996, the district court convicted appellant, pursuant to an Alford plea,<sup>1</sup> of one count of trafficking in a controlled substance. The district court sentenced appellant to serve a minimum term of thirty-six months to a maximum term of ninety months in the Nevada State Prison. Appellant did not receive any credit for time served. This court dismissed appellant's direct appeal. Huebner v. State, Docket No. 28943 (Order Dismissing Appeal, January 13, 1999).

On April 14, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a response to the State's opposition and a motion for an evidentiary hearing. 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 July 19, 1999, the district court denied appellant's petition. This appeal followed.<sup>2</sup>

In his petition, appellant first contended that his right to a fair trial and due process rights had been violated.

<sup>1</sup>North Carolina v. Alford, 400 U.S. 25 (1970).

<sup>2</sup>On August 26, 1999, the district court denied appellant's motion for an evidentiary hearing. To the extent appellant appeals from the denial of his motion, we conclude that the district court did not err. See NRS 34.770.

Specifically, appellant argued: (1) there was no probable cause to hold him, (2) the probable cause determination was not timely made, (3) he was denied his right to a timely preliminary hearing, (4) the State knowingly presented false testimony at the preliminary hearing, and (5) the State knowingly obtained and submitted illegal evidence at the preliminary hearing. Appellant also argued that his second arrest violated the Fourth Amendment and the Double Jeopardy Clause. The decision to enter a guilty plea bars appellant from raising independent claims charging the deprivation of constitutional rights that preceded the entry of his guilty plea. See Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). Moreover, appellant failed to support these claims with sufficient factual allegations, which if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Second, appellant argued that the district court erred in denying his pretrial petition for a writ of habeas corpus, filed after entry of his Alford plea, without first conducting an evidentiary hearing. Appellant waived this claim by failing to raise it on direct appeal. See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) (holding claims that are appropriate on direct appeal must be pursued on direct appeal, or they are waived), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); see also NRS 177.045 ("Upon the appeal, any decision of the court in an intermediate order or proceeding, forming a part of the record, may be reviewed."); Gary v. Sheriff, 96 Nev. 78, 80, 605 P.2d 212, 214 (1980) ("A defendant charged with having committed a public offense may challenge probable cause to hold him to answer through a [pretrial] petition for a writ of habeas corpus. If unsuccessful, he thereafter may challenge the state's case at trial, and on appeal from conviction if conviction occurs.").

Third, appellant argued that the district court erroneously denied his presentence motion to withdraw his guilty

plea. Appellant primarily argued that he should have been allowed to withdraw his plea because he was not informed he was ineligible to receive credit for presentence incarceration pursuant to NRS 176.055(2)(b) (providing that a defendant who is convicted of a subsequent offense, which was committed while he was on parole from a Nevada conviction, is not eligible for any credit on the sentence for the subsequent offense). Appellant challenged the denial of his presentence motion to withdraw his guilty plea on direct appeal, and this court determined that appellant failed to meet his burden of demonstrating that his plea was not knowingly or voluntarily entered. The doctrine of the law of the case prevents further relitigation of this issue. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Further, appellant cannot avoid this doctrine "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Id. at 316, 535 P.2d at 799.

Fourth, appellant argued that the State failed to comply with the terms of the negotiated plea agreement. The record on appeal belies appellant's claim, and therefore, appellant is not entitled to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


Fifth, appellant argued that he was deprived of his right to a fair trial because the district court judge was allegedly biased. Appellant failed to support his claim with sufficient specific factual allegations, which if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).


Finally, appellant argued that his counsel was ineffective at arraignment, trial, sentencing, and on appeal. Appellant argued that as a result of the ineffective assistance of counsel his due process rights had been violated. We conclude that the district court did not err in determining that appellant failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness or that he was prejudiced. See Strickland v. Washington, 466 U.S. 668 (1984);

Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Appellant failed to support his claims of ineffective assistance of counsel with sufficient specific factual allegations demonstrating that he was entitled to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976). Accordingly, we

ORDER this appeal dismissed.<sup>3</sup>

  
Rose, C.J.

  
Maupin, J.

  
Shearing, J.

cc: Hon. Michael L. Douglas, District Judge  
Attorney General  
Clark County District Attorney  
Kurt D. Huebner  
Clark County Clerk

<sup>3</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.