

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN ERIC BOYETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55169

**FILED**

SEP 10 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 denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

In his petition filed on August 11, 2009, appellant claimed that his trial counsel was ineffective. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both

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<sup>1</sup>This 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).

components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

First, appellant claimed that his trial counsel was ineffective for failing to ensure that the State filed judgments of conviction for habitual criminal purposes, failing to investigate the validity of his prior convictions, and failing to object to his adjudication as a habitual criminal. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The State filed five judgments of conviction in the district court which documented five previous felony convictions. Appellant failed to identify any reasons why those convictions should not have been considered by the district court. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Further, appellant received a substantial bargain by entry of his plea, as the State agreed to seek only sentencing as a small habitual criminal rather than seek the large habitual criminal sentence. NRS 207.010. Thus, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had his counsel objected. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to argue that the district court abused its discretion by failing to review the felony convictions. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At the sentencing hearing, the State presented the five felony convictions and then the district court admitted the judgments of conviction into evidence. The judgments of conviction for those felony convictions were also filed in the district court. Further, appellant agreed to be sentenced as a habitual criminal in the guilty plea agreement and

repeated that agreement at the plea canvass. Appellant failed to demonstrate that there would have been a reasonable probability of a different outcome had his trial counsel raised this objection. Therefore, the district court did not err in denying this claim.

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

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. James M. Bixler, District Judge  
Stephen Eric Boyett  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk