

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY D. LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56052

RICKY D. LEWIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56554

FILED

FEB 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are proper person appeals from orders of the district court denying post-conviction petitions for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge. We elect to consolidate these appeals for disposition. See NRAP 3(b).

Docket No. 56052

In his petition filed December 23, 2009, appellant claimed that counsel was ineffective when he denied appellant the opportunity to review his presentence investigation (PSI) report. To prove ineffective

¹These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the records are sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

assistance of counsel, a petitioner must demonstrate that counsel's performance was (a) deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Appellant failed to demonstrate deficiency or prejudice. After an evidentiary hearing, the district court found that appellant had reviewed the PSI report and was aware of its contents. We give deference to the district court's findings as they were supported by substantial evidence in the form of trial counsel's sworn testimony and appellant's own writings. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). We therefore conclude the district court did not err in denying this claim.²

Appellant also claimed that his sentence was based on "untrue, highly discriminatory information" and that he was entitled to additional presentence credits. Appellant's claims were outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a). Moreover, appellant's claim regarding presentence credits is

²To the extent appellant raised this claim as a violation of his due process and equal protection rights, it was outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. NRS 34.810(1)(a).

now moot as the district court filed an amended judgment of conviction on June 23, 2010, which reflects the requested additional credits.³

Docket No. 56554

Appellant's petition, filed on April 16, 2010, constituted an abuse of the writ as he raised claims new and different from those raised in his previous petition and was therefore procedurally barred absent a demonstration of good cause and actual prejudice. NRS 34.810(2); NRS 34.810(3). Appellant argued that he had good cause to excuse the procedural bar. Specifically, he argued that the new claims could not have been raised in his previous petition as that petition challenged the validity of the judgment of conviction. Appellant failed to demonstrate good cause because the claims raised in the instant petition—challenges to the validity of his lifetime supervision, the jurisdiction of the district court, and the validity of Nevada statutes where the Nevada Revised Statutes do not contain enacting clauses—also challenged the validity of the judgment of conviction.⁴ Appellant failed to demonstrate that he could not have raised these claims in his previous petition. Hathaway v. State, 119 Nev.

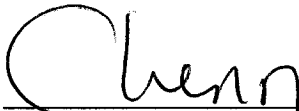
³The district court had erroneously denied this claim on the grounds that it could not be raised in a petition that also challenged the validity of the judgment of conviction. However, a claim for presentence credits is a challenge to the validity of the conviction. Griffin v. State, 122 Nev. 737, 739, 137 P.3d 1165, 1166 (2006) (overruling Pangallo v. State, 112 Nev. 1533, 930 P.2d 100 (1996)).


⁴Appellant's claims did not implicate the jurisdiction of the courts. Nev. Const. art. 6, § 6; NRS 171.010.

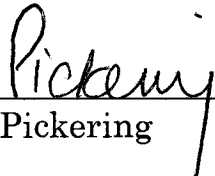
248, 252-53, 71 P.3d 503, 506 (2003). We therefore conclude the district court did not err in denying this claim.⁵

Appellant also again requested additional presentence credits. As discussed above, this claim is now moot. Accordingly, we

ORDER the judgments of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Ricky D. Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁵To the extent that the district court reached the merits of appellant's claims, "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory." State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). We nevertheless affirm the district court's decision for the reasons discussed herein. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).