

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD GUIMOND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35141

FILED

JUN 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus.

On April 26, 1994, the district court convicted appellant, pursuant to a nolo contendere plea, of one count of possession of stolen property and sentenced appellant to 7 years in the Nevada State Prison. The court suspended the sentence and placed appellant on probation for an indeterminate period of time not to exceed 5 years.

On January 22, 1998, the district court considered a motion to revoke appellant's probation. Appellant was represented by counsel at the revocation hearing. The State and appellant agreed to a modification of appellant's probation that prohibited appellant from having any contact with his spouse.¹ Appellant stated that he understood the new

¹It appears that appellant and his wife had separated and that appellant's violation of a temporary order of protection formed the basis for the January 1998 motion to revoke appellant's probation.

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condition. The court warned appellant that any contact with his spouse would result in revocation of appellant's probation.

On February 24, 1998, the district court considered a new motion to revoke appellant's probation based on allegations that appellant twice contacted his spouse following the modification of his probation to prohibit such contact.² Appellant was represented by counsel at the revocation hearing. Appellant stipulated to having violated the conditions of his probation by contacting his wife. Counsel for appellant and appellant made statements in support of mitigation and reinstatement to probation. The district court revoked appellant's probation and imposed the underlying prison sentence.

On February 24, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent appellant in the post-conviction proceedings. Counsel filed a supplement to the petition. The district court subsequently dismissed the petition without conducting an evidentiary hearing. This appeal followed.

Appellant contends that the district court erred in dismissing three of the claims in the proper person petition and two of the claims in the supplement to the petition. In particular, appellant argues that the district court erred in

²As a result of one of these contacts, at the time of his probation revocation hearing appellant had been sentenced to six months in jail.

dismissing the following post-conviction claims: (1) the court violated appellant's right to due process at the revocation hearing; (2) the court abused its discretion by revoking appellant's probation based on hearsay; and (3) counsel provided ineffective assistance at the revocation hearing. We conclude that appellant's contentions lack merit.

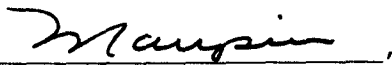
The district court dismissed the first two claims set forth above because appellant admitted during the revocation hearing that he violated his probation and, therefore, the State was not required to present witnesses to prove the probation violation. The court specifically concluded that appellant's suggestion that he did not admit to the probation violation was belied by the record and did not warrant an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Based on our review of the record, we conclude that the district court did not err in rejecting these claims.

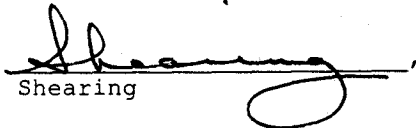
The district court dismissed the ineffective assistance claims on the grounds that appellant's stipulation to the probation violation relieved counsel of any obligation to contest the probation violation and that even if counsel should have contested the probation violation, appellant failed to specify what evidence should have been presented at the revocation hearing or how that evidence would have changed the outcome of the hearing. Based on our review of the record, we conclude that the district court did not err in rejecting these claims of ineffective assistance without an evidentiary hearing because appellant failed to allege

sufficient facts to establish that he was prejudiced by counsel's allegedly deficient performance.³ See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Strickland v. Washington, 466 U.S. 668 (1984); United States v. Berry, 814 F.2d 1406, 1409 (9th Cir. 1987).

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Connie J. Steinheimer, District Judge
Attorney General
Washoe County District Attorney
Frederick R. Olmstead
Washoe County Clerk

³We note that it is not entirely clear that appellant had a constitutional or statutory right to counsel in the revocation proceedings. See Naves v. State, 91 Nev. 106, 531 P.2d 1360 (1975) (explaining that probationers do not enjoy an absolute right to counsel at probation revocation hearings); Fairchild v. Warden, 89 Nev. 534, 516 P.2d 106 (1973) (same). If counsel was not appointed or retained pursuant to a statutory or constitutional mandate, then appellant would not have the right to effective assistance of counsel. Cf. Crump v. Warden, 113 Nev. 293, 934 P.2d 247 (1997) (holding that post-conviction habeas petitioner has right to effective assistance of post-conviction counsel only if counsel was appointed pursuant to statutory mandate). We decline to address this issue in this appeal as it was not raised below or on appeal.