

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO D. ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56560

FILED

FEB 09 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

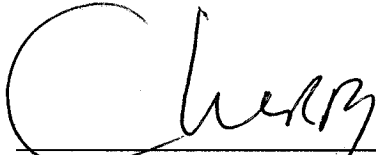
In his petition filed on May 7, 2010, appellant claimed that his trial counsel was ineffective. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).


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).


Appellant claimed that his trial counsel was ineffective for failing to argue that his prior convictions could not be considered for purposes of sentencing as a habitual criminal because they were stale, nonviolent, and tainted. Appellant failed to demonstrate that his trial counsel's performance was deficient because the habitual criminal statute makes no special allowance for non-violent crimes or for remoteness of the prior convictions; these are merely considerations within the discretion of the district court. Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992). Appellant failed to demonstrate that he was prejudiced because he agreed to be sentenced as a habitual criminal in the guilty plea agreement. Therefore, appellant failed to demonstrate that the district court erred in denying this claim.

Next, appellant claimed that the district court erred at sentencing by following appellant's sentencing agreement with the State. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Therefore the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

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