


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ANTHONY JOYCE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57103

**FILED**

**MAY 10 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

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; Douglas W. Herndon, Judge.

In his petition, filed on April 28, 2010, appellant claimed that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate (a) that counsel's performance was 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

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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).

(1984) (adopting the test in Strickland). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant claimed that counsel was ineffective for failing to use appellant's purchase of some merchandise to disprove that he had motive and intent to commit burglary. Appellant failed to demonstrate deficiency or prejudice. The undisputed evidence at trial was that appellant purchased some items, and counsel highlighted that fact in closing arguments. Further, appellant's claim that there were other facts counsel should have used to disprove motive and intent is a bare, naked claim unsupported by specific information. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Moreover, as the crime of burglary is committed when a person enters a building with the necessary intent, NRS 205.060; State v. Adams, 94 Nev. 503, 505, 581 P.2d 868, 869 (1978), later paying for some merchandise does not necessarily disprove the intent upon entry. We therefore conclude that the district court did not err in denying this claim.

Second, appellant claimed that counsel was ineffective for not adequately stressing the significance of the store's security devices in relation to the burglary charge. Appellant failed to demonstrate deficiency or prejudice. Appellant's claim was belied by the record as counsel argued extensively in closing remarks that the State had not proven burglary because the surveillance video did not clearly show appellant secreting any merchandise and that despite all of the security devices on the item in question, appellant triggered no security alarms. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. We therefore conclude that the district court did not err in denying this claim.

Third, appellant claimed that counsel was ineffective for not preventing the adjudication of appellant as a habitual criminal. Appellant failed to demonstrate deficiency or prejudice. Appellant's claim that the State provided a certified copy of only one of his prior convictions is belied by the record. See id. Although the State only had one certified copy at appellant's originally scheduled sentencing hearing, the district court continued that hearing, and the State provided certified copies of all six of appellant's prior judgments of conviction on the continued hearing date. We therefore conclude that the district court did not err in denying this claim.<sup>2</sup>


Finally, appellant claimed that counsel was ineffective for deceiving him regarding the plea offer. Specifically, appellant alleged that counsel miscommunicated a global plea offer and failed to inform him that the plea offer would be revoked should he proceed to trial. The district court did not hold an evidentiary hearing on this claim. Appellant's claim was not belied by the record and, if true, may have entitled him to relief. See Hargrove, 100 Nev. at 502-03, 686 P.2d at 225. We therefore conclude

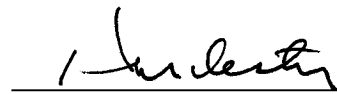
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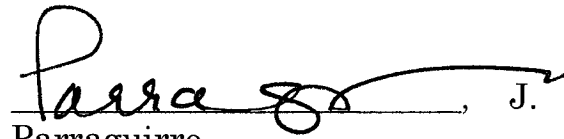
<sup>2</sup>To the extent that appellant claimed that the sentencing court abused its discretion in adjudicating him a habitual criminal, his claim was barred by the doctrine of the law of the case as this court held on direct appeal that the district court did not abuse its discretion in doing so. Joyce v. State, Docket No. 52213 (Order of Affirmance, May 29, 2009). To the extent that appellant claimed that his sentence was cruel and unusual, this claim could have been raised on direct appeal, NRS 34.810(1)(b)(2), and was therefore procedurally barred absent a demonstration of cause and actual prejudice, NRS 34.810(1)(b). Appellant failed to allege cause or demonstrate actual prejudice.

the district court erred in denying the petition without conducting an evidentiary hearing on this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>3</sup>

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Douglas W. Herndon, District Judge  
David Anthony Joyce  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.