IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER LANDE STREET,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35260

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On June 15, 1994, the district court convicted appellant, pursuant to a jury verdict, of grand larceny. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of eighteen (18) years in the Nevada State Prison. This court remanded appellant's direct appeal to the district court for the limited purpose of correcting appellant's judgment of conviction which incorrectly represented that appellant's conviction resulted from his entry of a guilty plea.[1] Otherwise, this court affirmed appellant's conviction and sentence. Remittitur issued on November 17, 1998. On November 25, 1998, the district court entered an amended judgment of conviction.

On August 24, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 14, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that he received ineffective assistance of counsel. Specifically, appellant contended that his counsel (1) "didn't do any investigation or call witnesses on behalf of

[1]Street v. State, Docket No. 26191 (Order of Remand, October 28, 1998).

01-21187

(O)-4892

(appellant)," and (2) "did not adequately point out to the jury that the (victim's) purse and its contents had not been preserved as evidence." We conclude that the district court did not err in determining that appellant failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness or that he was prejudiced.[2] Appellant failed to support his claims of ineffective assistance of counsel with sufficient specific factual allegations demonstrating that he was entitled to relief.[3] Moreover, we find that appellant's second claim is belied by the record.[4] Defense counsel thoroughly cross-examined State's witnesses regarding the alleged mishandling of the victim's purse and its contents, and again addressed this issue in his closing argument.[5] Thus, appellant's claims of ineffective assistance of counsel are without merit.

Appellant next contended that he received ineffective assistance of appellate counsel. Specifically, appellant argued that his appellate counsel failed to raise the following two issues on direct appeal: (1) "the chain of command (sic) of the purported money taken from the victim," and (2) abuse of discretion by the district court in adjudicating appellant a habitual criminal. The first of these claims is belied by the record.[6] Appellate counsel raised this issue on direct appeal. Specifically, appellate counsel alleged on direct appeal that "there was insufficient evidence that the victim's purse contained $250 or more at the time it was stolen because the contents of the purse were not inventoried immediately after the purse was recovered."[7]

---

[2]See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

[3]See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

[4]Id. at 503, 686 at 225.

[5]In his closing argument, defense counsel stated "that the person who took . . . the purse had no idea how much money was in (it) . . . That's something that the State has to prove beyond a reasonable doubt, that there was over $250 at that time it was taken . . . What we don't have in this case is the officer or security officers taking the purse as it's located next to Mr. Street or in his area counting [the money then in] it."

[6]Hargrove, 100 Nev. at 503, 686 P.2d at 225.

[7]See NRS 205.220(1)(a) (providing, in pertinent part, that a person commits grand larceny if the person intentionally steals the personal property of another with a value of $250 or more.).

With regard to appellant's second claim of ineffective assistance of appellate counsel, appellant specifically alleged that appellate counsel failed to argue (1) that the district court judge improperly "relied upon a judgment out of a court in New Mexico to establish that the petitioner was an (sic) habitual criminal," and (2) that the judge "adjudicated [appellant] a habitual criminal without the requisite findings."

To state a claim of ineffective assistance of counsel, a defendant must demonstrate that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense.[8] "Deficient" assistance of counsel is representation that falls below an objective standard of reasonableness.[9] To establish prejudice based on the deficient assistance of appellate counsel, the defendant must show that the omitted issue would have a reasonable probability of success on appeal.[10] The court need not consider both prongs of the Strickland test if the defendant makes an insufficient showing on either prong.[11]

We conclude that appellant cannot demonstrate that he was prejudiced by counsel's failure to raise this issue on direct appeal because appellant's claim is without merit.[12] A thorough review of the record on appeal reveals that the district court did not abuse its discretion in adjudicating appellant a habitual criminal. The district court judge properly considered all of the information contained in the pre-sentence investigation report for purposes of weighing whether appellant should be

---

[8]See Hill v. Lockhart, 474 U.S. 52 (1985); Strickland v. Washington, 466 U.S. 668 (1984).

[9]Strickland, 466 U.S. at 688.

[10]Kirksey, 112 Nev. at 998, 923 P.2d at 1114 (citing Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath v. Jones, 941 F.2d 1126, 1132 (11th Cir. 1991)).

[11]See Strickland, 466 U.S. at 697.

[12]Appellant also raised this issue as a constitutional violation independent of his ineffective assistance of appellate counsel claim. To the extent that this issue could have been raised on direct appeal, it is waived. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994) overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). We nevertheless address appellant's claim in connection with his contention that appellate counsel should have raised it on direct appeal.

adjudicated a habitual criminal. The State provided the district court with certified proof of appellant's nine prior convictions, four of which were felonies. The district court considered the comments of defense counsel and appellant who both spoke in mitigation. Further, the district court exercised its discretion and sentenced appellant under the "small" habitual criminal statute, although appellant could have been sentenced under the more onerous "large" habitual criminal statute.[13] Moreover, although it is easier for this court to determine whether the sentencing court properly exercised its discretion where the sentencing court makes particularized findings and specifically addresses the nature and gravity of the prior convictions, this court has never required such explicit findings.[14] Thus, appellant's claims of ineffective assistance of appellate counsel are without merit.

Finally, appellant contended that the evidence presented at trial was insufficient to support the verdict due to the fact that the victim's purse and its contents were not properly collected and inventoried at the time appellant was apprehended for the instant offense. This court previously considered and rejected this claim raised in appellant's direct appeal. The doctrine of the law of the case prevents further litigation of this issue.[15] Moreover, "[t]he doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."[16]

---

[13]See NRS 207.010(1)(a) (providing that a person previously convicted of two felonies "shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years."); see also NRS 207.010(1)(b)(providing that a person previously convicted of three felonies may be sentenced to life in prison without the possibility of parole, life in prison with the possibility of parole after 10 years, or for a definite term of 25 years in prison with parole eligibility after 10 years).

[14]Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000).

[15]Hall at 315, 535 P.2d at 798.

[16]Id. at 316, 535 P.2d 799.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.[17] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing, J.

Rose, J.

Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General/Carson City
Clark County District Attorney
Christopher Lande Street
Clark County Clerk

[17]See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).