

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY HAYWARD SIMS,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER,
Respondent.

No. 57907

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

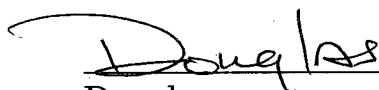
ORDER OF AFFIRMANCE

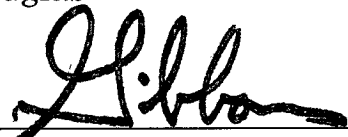
This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.


On appeal from the denial of his petition filed on June 29, 2006, and his supplemental petition filed on May 20, 2008, appellant argues that the district court erred by denying the petition without addressing several claims of ineffective assistance of counsel—specifically, whether trial counsel was ineffective for failing to argue that the habitual criminal adjudication was cruel and unusual punishment, a violation of double jeopardy principles, and an improper successive penalty. We disagree. Appellant raised claims regarding cruel and unusual punishment and double jeopardy in his proper person petition, but then his appointed counsel filed a supplemental petition explicitly withdrawing both of these claims. Thus, because appellant abandoned these claims below, we conclude that the district court did not err in failing to consider

them.¹ As to appellant's contention that the district court should have addressed whether trial counsel was ineffective for failing to argue that the habitual criminal statute does not allow for successive habitual criminal penalties, appellant did not raise this ineffective-assistance claim in his petition or supplemental petition, and thus there was no error by the district court in failing to consider it. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹Appellant argues that it is not clear from the record that he consented to the withdrawal of these claims, and thus he has good cause to excuse any abandonment of the claims. Appellant has failed to demonstrate that the district court erred in relying on counsel's verified supplemental petition. Cf. NRS 34.730(1) (providing that counsel's verification requires that "petitioner personally authorized counsel to commence the action"); Wehrheim v. State, 84 Nev. 477, 480, 443 P.2d 607, 608 (1968) ("A party is bound by the acts of his attorney in the management of his case.").

cc: Hon. Brent T. Adams, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk