

IN THE SUPREME COURT OF THE STATE OF NEVADA

THELUS EUGENE EDMOND,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58432

**FILED**

**FEB 08 2012**

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

ORDER OF AFFIRMANCE

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; Kenneth C. Cory, Judge.

In his petition filed on January 12, 2011, and in his amended petition filed on April 25, 2011, appellant claimed that trial counsel was ineffective for failing to argue that: (1) appellant was “habitualized” on infirm proceedings, (2) the habitual criminal statute is unconstitutional pursuant to federal case law, (3) the State violated his equal protection rights by selectively choosing to seek habitual criminal adjudication, (4) the habitual criminal statutes are vague and ambiguous, (5) the convictions relied upon for habitual criminal adjudication were stale and not proven beyond a reasonable doubt and (6) petitioner was evaluated and accepted for the Salvation Army drug treatment program. Appellant also claimed that appellate counsel was ineffective for failing to argue on appeal that the State violated his equal protections rights. These were

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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).

bare and naked claims that were not supported by specific facts, that if true, entitled appellant to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Therefore the district court did not err in denying these claims.

Finally, appellant claimed that trial counsel was ineffective for failing to argue that the notice to seek habitual criminal adjudication was untimely filed.<sup>2</sup> Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. The underlying claim—that the intent to seek habitual criminal adjudication was not properly filed—is belied by the record as the State filed the notice to seek habitual criminal adjudication in the information. NRS 207.016(2). Counsel cannot be deemed ineffective for failing to make futile arguments. Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry.

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

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<sup>2</sup>To the extent that appellant raised this claim independently from his claim of ineffective assistance of counsel, the claim was procedurally barred, NRS 34.810(1)(b)(2), and appellant failed to demonstrate good cause and prejudice to overcome the procedural bar. NRS 34.810(1)(b).

cc: Hon. Kenneth C. Cory, District Judge  
Thelus Eugene Edmond  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk