

IN THE SUPREME COURT OF THE STATE OF NEVADA

COREY D. WIMBLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59961

**FILED**

NOV 14 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
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; Michael Villani, Judge.

In his petition filed on September 24, 2011, appellant claimed that he received ineffective assistance of counsel. 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. Strickland v. Washington, 466 U.S. 668, 697 (1984).

<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).

Appellant claimed that trial counsel was ineffective for failing to challenge the deadly weapon enhancement because it has been erroneously interpreted and construed to proscribe two separate sentences, and the deadly weapon enhancement is silent and ambiguous as to the proper procedure by which it is to be charged and implemented. Further, he claimed that trial counsel was ineffective for failing to challenge the statute for robbery because it is void for vagueness in regards to the deadly weapon enhancement.<sup>2</sup> Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. Trial counsel is not deficient for failing to raise futile claims. See Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). We note that this court concluded in Nevada Dep't. Prisons v. Bowen, 103 Nev. 477, 481, 745 P.3d 697, 699 (1987), that the deadly weapon enhancement is a separate sentence. Moreover, in Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975), this court determined that the robbery statute was not void for vagueness in regards to the deadly weapon enhancement. Further, appellant failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had trial counsel raised these issues.

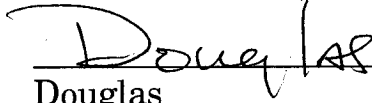
Finally, appellant's claim that the district court lacked subject matter jurisdiction because of the unconstitutionality of the deadly weapon enhancement was patently without merit and did not implicate

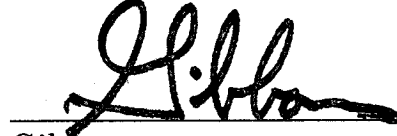
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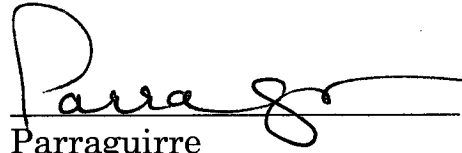
<sup>2</sup>To the extent that appellant raised these claims independent of his ineffective-assistance-of-counsel claims, these claims were outside the scope of post-conviction petition for a writ of habeas corpus challenging the validity of a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a).

the district court's jurisdiction. Nev. Const. art. 6 § 6; NRS 171.010.  
Therefore, the district court did not err in denying the petition.  
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Michael Villani, District Judge  
Corey D. Wimbley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk