

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN A. MCGONIAGLE,

Appellant,

vs.

ROBERT BAYER, WARDEN,

Respondent.

No. 35520

FILED

MAY 25 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

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

On February 10, 1999, the district court convicted appellant, pursuant to a guilty plea, of felony driving under the influence and sentenced appellant to sixteen (16) to forty (40) months in prison. Because appellant had agreed to civil forfeiture of his vehicle, which was his only asset, the court found appellant to be indigent and reduced the mandatory fine to zero. Appellant did not pursue a direct appeal.

On April 13, 1999, appellant filed a timely post-conviction petition for a writ of habeas corpus in the district court. The court appointed counsel to represent appellant. Appointed counsel filed a supplement to the petition. The district court declined to conduct an evidentiary hearing and denied the petition. This timely appeal followed.

Appellant first contends that trial counsel provided ineffective assistance. In particular, appellant alleges that counsel's performance was deficient because counsel advised appellant on matters outside of her court-appointed function and that appellant was prejudiced by counsel's deficient performance "by in essence being fined more than twice the amount of the statutory maximum." We conclude that appellant's contention lacks merit. But for counsel's advice and the subsequent negotiation of appellant's criminal case to avoid the mandatory fine, appellant likely faced both civil forfeiture of his vehicle and a fine of \$2,000.00 to \$5,000.00. See *Levingston v.*

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Washoe County, 114 Nev. 306, 956 P.2d 84 (1998) (holding that Nevada's civil forfeiture statutes do not constitute punishment for purposes of Double Jeopardy Clause). Under the circumstances, we conclude that appellant failed to demonstrate that counsel's performance fell below an objective standard of reasonableness. As a result, appellant's claim of ineffective assistance of counsel must fail. See Strickland v. Washington, 466 U.S. 668 (1984).

Appellant next contends that he was subjected to an excessive fine in violation of the federal and state constitutions. We disagree. The fine in the criminal case was reduced to zero. Thus, it cannot be said to be excessive. Appellant's true complaint seems to be that the civil forfeiture was excessive. While the Excessive Fines Clause applies to in rem civil forfeiture proceedings,¹ a challenge to the civil forfeiture is not properly the subject of a post-conviction petition for a writ of habeas corpus challenging a criminal conviction. We therefore conclude that the district court did not err in rejecting this claim.²

Finally, appellant contends that the bail amount set by the justice court violated the constitutional proscriptions against excessive bail. See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. However, by pleading guilty, appellant waived all errors, including the deprivation of constitutional rights that occurred prior to entry of his guilty plea. See Tollett v. Henderson, 411 U.S. 258, 267 (1973); Webb v. State,

¹See Levingston v. Washoe Co., 112 Nev. 479, 916 P.2d 163 (1996), modified on reh'g on other grounds, 114 Nev. 306, 956 P.2d 84 (1998).

²For similar reasons, appellant's due process challenge to the civil forfeiture and the State's alleged failure to comply with SCR 175 and Jacobs v. Sheriff, 108 Nev. 726, 837 P.2d 436 (1992), are not properly raised in the post-conviction habeas petition. Nonetheless, we note that appellant waived his right to a hearing in the civil forfeiture proceeding by entering the settlement agreement. Moreover, there does not appear to be a violation of Jacobs as appellant's attorney in the criminal proceedings was aware of the forfeiture proceedings and it appears that appellant understood that counsel in the criminal proceedings would not be representing appellant in the forfeiture proceedings.

91 Nev. 469, 470, 538 P.2d 164, 165 (1975). Moreover, where the defendant has pleaded guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself and the effectiveness of counsel. NRS 34.810(1); Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). On appeal, appellant has not alleged any claim of ineffective assistance of counsel in connection with the amount of bail set by the justice court. Accordingly, we conclude that appellant waived any constitutional challenge to the amount of bail.

Having considered appellant's contentions and concluded that they do not warrant relief, we

ORDER this appeal dismissed.

<u>Young</u>	J.
<u>Agosti</u>	J.
<u>Leavitt</u>	J.

cc: Hon. David R. Gamble, District Judge
Attorney General
Douglas County District Attorney
Kay Ellen Armstrong
Douglas County Clerk