

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT RISSER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 60906

FILED

JAN 16 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Hargrove*  
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; J. Charles Thompson, Judge.

In his petition, filed on February 21, 2012, appellant claimed that counsel was ineffective for failing to investigate, communicate well, address errors in appellant's presentence investigation report (PSI report), challenge his adjudication as a habitual criminal, or do anything since he entered his guilty plea. Appellant also claimed that counsel had a conflict of interest. Appellant failed to support these claims with specific facts that, if true, would have entitled him to relief. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that "bare" or "naked" claims are insufficient to grant relief). Further, counsel filed a motion to withdraw appellant's guilty plea and raised errors in the PSI report at

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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).

sentencing, acts which appear to belie appellant's claims that counsel did not raise errors and did "nothing" after entry of the guilty plea. See id. We therefore conclude that the district court did not err in denying these claims.

Appellant also claimed that his guilty plea was invalid because the State breached the guilty plea agreement when the district court imposed a sentence greater than that agreed to by the parties and because he only had a few minutes to look over the guilty plea agreement and did not understand it or the consequences of his guilty plea. Appellant failed to demonstrate that his plea was invalid. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). In accordance with the guilty plea, the State did not argue for a sentence greater than that for small habitual criminal adjudication. Further, appellant acknowledged during his plea colloquy that he had read and understood the guilty plea agreement and that the sentence imposed was entirely up to the judge, and he stated at least two times that he had no questions. Because the totality of the circumstances reveals that appellant understood the consequences of his plea, see State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000), we conclude that the district court did not abuse its discretion in denying appellant's claim, see Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

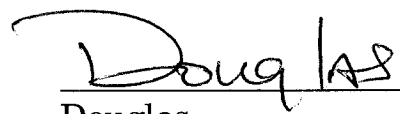
Appellant's remaining claims—that the habitual criminal statute is unconstitutional and his sentence amounted to cruel and unusual punishment—were outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a). Moreover this court held on direct appeal that appellant's sentence was not cruel and

unusual, and that holding is now the law of the case. See Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). We therefore conclude that the district court did not err in denying these claims.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

  
\_\_\_\_\_, J.  
Saitta

cc: Chief Judge, Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Robert Risser  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.