

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARNELL HODGES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35633

FILED

SEP 28 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On April 15, 1999, the district court convicted appellant, pursuant to a jury verdict, of two counts of robbery with the use of a deadly weapon (Counts I and II).¹ The district court sentenced appellant to serve the following terms in the Nevada State Prison: for count I, two consecutive terms of 156 months with minimum parole eligibility in 48 months; and for count II, two consecutive terms of 156 months with minimum parole eligibility in 48 months. Count II was ordered to be served concurrently to Count I. This court dismissed appellant's appeal from his judgment of conviction and sentence.² The remittitur issued on September 21, 1999.

¹On August 25, 1999, the district court entered an amended judgment of conviction omitting an erroneous reference to the habitual criminal statute.

²Hodges v. State, Docket Nos. 34048 and 34102 (Order Dismissing Appeals, August 25, 1999).

On October 12, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.³ The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On January 3, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his conviction was invalid because he was denied the right to presentment or indictment by the grand jury in violation of his birth right and heritage which was established under the Magna Carta, the district court did not have jurisdiction over his case, his counsel was ineffective in failing to challenge these alleged violations of his rights, and lastly, there was insufficient evidence to convict him. Appellant also sought over 2 million dollars in damages.

We conclude that the district court did not err in denying appellant's petition. A prosecution may be initiated by either the filing of a grand jury presentment or indictment or the filing of an information.⁴ Appellant's case originated with the filing of an information after a preliminary hearing. Therefore, appellant's counsel was not ineffective in failing to challenge the lack of grand jury proceedings.⁵ Appellant's claim

³Appellant labeled his petition a "petition for an extraordinary writ of habeas corpus ad-subjiciendum and nisi plea." Because appellant challenges his judgment of conviction, we conclude that the district court did not err in construing appellant's petition to be a post-conviction petition for a writ of habeas corpus. See NRS 34.724(2)(b) (stating that a post-conviction petition for a writ of habeas corpus "[c]omprehends and takes the place of all other common law, statutory or other remedies which have been available for challenging the validity of the conviction or sentence, and must be used exclusively in place of them").


⁴See Nev. Const. art. 1, sec. 8; see also NRS 172.015; NRS 173.015; NRS 173.025; NRS 173.035.

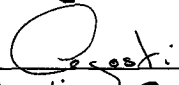
⁵See Strickland v. Washington, 466 U.S. 668 (1984).


relating to the district court's jurisdiction is wholly without merit. Lastly, appellant's claim that there was insufficient evidence to convict him at trial was previously considered and rejected by this court in the context of appellant's direct appeal. The doctrine of law of the case prevents further relitigation of this claim.⁶

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Clark County District Attorney
Darnell Hodges
Clark County Clerk

⁶See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

⁷See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).