

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEONTE DWAYNE JONES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69655

FILED

JUL 27 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Senior Judge.

Appellant Keonte Dwayne Jones argues the district court erred in denying his claims of ineffective assistance of counsel raised in his March 5, 2015, petition. 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, 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).

First, Jones argues his counsel was ineffective for recommending Jones plead guilty to burglary when he was factually precluded from being convicted of that charge. Jones asserts the State

failed to present sufficient evidence at the preliminary hearing to show that Jones properly waived his *Miranda*¹ rights because that discussion was not recorded, that he could properly be identified as the person who pawned the television, or that he was a not a bona fide purchaser of the television. Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice.

A review of the record demonstrates the State presented sufficient evidence for a probable cause finding to support the charges against Jones. See *Sheriff, Washoe Cty. v. Middleton*, 112 Nev. 956, 961, 921 P.2d 282, 285 (1996); *Lamb v. Holsten*, 85 Nev. 566, 568, 568, 459 P.2d 771, 772 (1969). At the preliminary hearing, the State presented testimony from a police officer who stated Jones had waived his *Miranda* rights, and that Jones then stated he had known the television was stolen, but chose to pawn it. The State also presented evidence demonstrating Jones had presented his identification to the pawn shop when he pawned the television. As the State demonstrated probable cause to support the charges, Jones failed to demonstrate objectively reasonable counsel would have advised Jones to reject a plea offer on these bases. In addition, Jones failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel offered different advice regarding the plea negotiations. Therefore, the district court did not err in denying this claim.

Second, Jones argues his counsel was ineffective for recommending Jones plead guilty to burglary when he was legally


¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

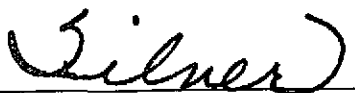
precluded from being convicted of that charge. Jones asserts the State failed to show the value of the television was more than \$650 or that Jones had twice been convicted of petit larceny within the preceding seven years or had been previously convicted of a felony. See NRS 205.060(5)(a), (b). Jones failed to demonstrate his counsel's performance was deficient or resulting prejudice.

The district court concluded that Jones was previously convicted of felony assault with a deadly weapon. Given Jones' prior felony conviction, he failed to demonstrate objectively reasonable counsel would have raised this issue or a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel offered different advice regarding the plea negotiations. Therefore, the district court did not err in denying this claim.

Having concluded Jones is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Chief Judge, Eighth Judicial District Court
Hon. Joseph T. Bonaventure, Senior Judge
Law Office of Nadine Morton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk