

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONY L. CUNNINGHAM,
Appellant,
vs.
BRIAN E. WILLIAMS, WARDEN,
Respondent.

No. 70463

FILED

MAR 23 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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ORDER OF AFFIRMANCE

Appellant Tony L. Cunningham appeals from an order of the district court denying three postconviction petitions for a writ of habeas corpus.¹ Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

¹Docket No. 70463 is an appeal from the denial of a petition filed in district court case number CR141021. Docket No. 70464 is an appeal from the denial of a petition filed in district court case number CR141022. Docket No. 70465 is an appeal from an order denying a petition filed in
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In his petitions filed on February 25, 2016, Cunningham claimed his counsel was ineffective. 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

Cunningham claimed his counsel was ineffective for failing to assert the Nevada Revised Statutes are invalid because justices of the Nevada Supreme Court improperly participated in the commission authorized with making recommendations towards their creation. Cunningham failed to demonstrate his counsel's performance was deficient or resulting prejudice.

Cunningham alleges the justices made recommendations which were later adopted by the Nevada legislature. Cunningham's


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district court case number CR141135. We note Cunningham filed identical petitions in each case and the district court denied the petitions in the same order. These appeals have been submitted for decision without oral argument and we conclude the records are sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

allegation does not demonstrate the justices actually encroached upon the role of the legislature during the passage of the statutes authorizing the creation of the Nevada Revised Statutes. *See Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-92, 212 P.3d 1098, 1103-04 (2009) (discussing Nevada state government's separation of powers). Moreover, Cunningham failed to demonstrate the justices' role on any committee involving creation of the Nevada Revised Statutes was improper. Accordingly, Cunningham 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 raised this issue. Therefore, we conclude the district court did not err in denying the petitions and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Tony L. Cunningham
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk