

IN THE SUPREME COURT OF THE STATE OF NEVADA

VON SHERMAN TITTLE,

No. 36806

Appellant,

vs.

FILED

THE STATE OF NEVADA,

MAY 18 2001

Respondent.

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

ORDER OF AFFIRMANCE

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

On August 11, 1999, the district court convicted appellant, pursuant to a guilty plea, of one count of ex-felon in possession of a firearm. The district court sentenced appellant to serve 12 to 72 months in prison, to be served consecutively to appellant's sentence in district court case CR99-0916. Appellant filed a notice of appeal from the judgment of conviction, but subsequently moved to dismiss the appeal voluntarily. This court granted the motion and dismissed the appeal.¹

On June 15, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The State filed a motion to dismiss the petition because it contained nothing but conclusory allegations. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel or conduct an evidentiary hearing. On September 14,

¹Tittle v. State, Docket No. 34826 (Order Dismissing Appeal, October 21, 1999).

2000, the district court dismissed the petition. This appeal followed.²

Appellant contends that the district court erred in rejecting two of his claims: that the state breached the plea agreement at sentencing, and that the criminal complaint was invalid. Both of these claims were raised below in the context of ineffective assistance of counsel. We conclude that the district court did not err in rejecting these claims without an evidentiary hearing.³

First, appellant did not support his claim of ineffective assistance of counsel based on a breach of the plea agreement with any factual allegations that would, if true, have entitled him to relief. The allegation contained in the petition was a conclusory statement: "Ineffective Assistance. Breach of Plea Agreement." Accordingly, we conclude that appellant was not entitled to an evidentiary hearing and that the district court did not err in dismissing appellant's ineffective assistance claim based on a breach of the plea agreement.⁴

Second, appellant's claim that trial counsel was ineffective for failing to challenge the criminal complaint lacks merit. Appellant argues that trial counsel should have challenged the criminal complaint on the following grounds: it was not sworn before a magistrate or notarized, and it contained insufficient, conclusory allegations. We conclude that trial counsel was not deficient for failing to raise

²Appellant is represented by counsel on appeal.


³Appellant raised other grounds for relief in his petition. On appeal, he has not challenged the district court's rejection of those claims. Accordingly, we have not addressed those claims.

⁴See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984); see also NRS 34.770(2).

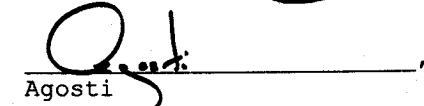
these issues because they lack merit.⁵ The criminal complaint was signed by the prosecutor upon declaration under penalty of perjury. This is all that is required by NRS 171.102.⁶ Moreover, the criminal complaint provides a sufficient written statement of the essential facts constituting the offenses charged to put appellant on notice of the charges he had to defend.⁷ Because appellant's substantive challenges to the complaint lack merit, we conclude that counsel was not deficient for failing to make these arguments prior to appellant's entry of his guilty plea.

Having considered appellant's contentions and concluded that they lack merit, we

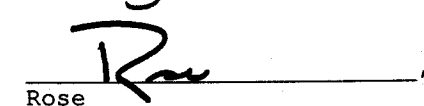
ORDER the judgment of the district court AFFIRMED.



Shearing J.



Agosti J.



Rose J.

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Scott W. Edwards
Washoe County Clerk

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

⁶NRS 171.102 provides that a complaint must be made upon:
"1. Oath before a magistrate or a notary public; or 2.
Declaration which is made subject to the penalty for perjury."
(Emphasis added).

⁷See NRS 171.102 (stating that "complaint is a written statement of the essential facts constituting the public offense charged"); see also Sanders v. Sheriff, 85 Nev. 179, 181-82, 451 P.2d 718, 720 (1969) (explaining that "the complaint is intended solely to put the defendant on formal written notice of the charge he must defend").