

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG LAWRENCE TEIXEIRA,

No. 36858

Appellant,

Vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**MAY 18 2001**

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of two counts of the sale of a controlled substance. Appellant was sentenced to a prison term of 45 to 120 months on one count and sentenced to a consecutive prison term of 38 to 96 months on the other.

Appellant filed a direct appeal, alleging that his sentence constituted cruel and unusual punishment in violation of the United States and Nevada Constitutions. This court affirmed the judgment of conviction.<sup>1</sup> Appellant also filed a motion to correct illegal sentence in the district court, which was denied. Appellant then filed a petition for a writ of habeas corpus.

In the petition, appellant presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>2</sup>

<sup>1</sup>Teixeira v. State, Docket No. 34364 (Order Dismissing Appeal, November 19, 1999).

<sup>2</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

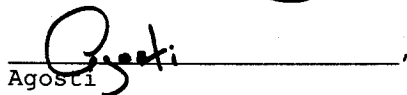
01-08288

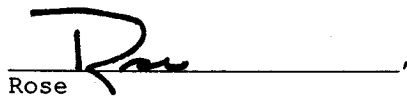
Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_  
Shearing J.

  
\_\_\_\_\_  
Agosti J.

  
\_\_\_\_\_  
Rose J.

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Churchill County District Attorney  
Rick Lawton  
Churchill County Clerk

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<sup>3</sup>Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents.

1 Case No. 25-3A

FILED

2 Department No. II

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3 GLORIA VENTURACCI  
4 COUNTY CLERK

5 BY *[Signature]* DEPUTY

6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF CHURCHILL

9 \* \* \*

10 GREG TEIXEIRA,

11 Petitioner,

12 vs.

13 THE STATE OF NEVADA,

14 Respondent.

ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS

15 \_\_\_\_\_ /  
16  
17 Petitioner filed a post-conviction petition for writ of  
18 habeas corpus on March 28, 2000. Petitioner alleges ineffective  
19 assistance of counsel, stating that he was not advised that his  
20 prior convictions could be used to enhance his sentence.  
21 Specifically, petitioner points to the failure to include his  
22 previous convictions in the charging document in violation of NRS  
23 453.348<sup>1</sup>. He also points to the statement in his guilty plea  
24 agreement that he was eligible for probation.

25 "To establish ineffective assistance of counsel, a

26 \_\_\_\_\_  
27 <sup>1</sup>  
28 NRS 453.348 provides in pertinent part that "[i]n any proceeding brought under NRS 453.316, 453.321, 453.333, 453.334, 453.337, 453.338 or 453.401, any previous convictions of the offender for a felony relating to controlled substances must be alleged in the indictment or information charging the primary offense...."

151

1 defendant must show that counsel's representation fell below an  
2 objective standard of reasonableness and that counsel's deficient  
3 performance prejudiced the defense." Strickland v. Washington,  
4 466 U.S. 668, 687-88, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "To  
5 establish prejudice, the defendant must show that but for  
6 counsel's mistakes, there is a reasonable probability that the  
7 result of the proceeding would have been different." Id. at 694,  
8 104 S.Ct. 2052. "Judicial review of a lawyer's representation is  
9 highly deferential, and a defendant must overcome the presumption  
10 that a challenged action might be considered sound strategy." Id.  
11 at 689, 104 S.Ct. 2052.

13           After reviewing the pleadings, transcript and evidence  
14 presented, this Court finds that the petition is without merit.  
15 Any defects in Petitioner's initial notice of the effect of his  
16 previous conviction were cured during his various court appear-  
17 ances. This Court correctly advised Petitioner of the penalties  
18 he was facing when he entered his guilty plea, and again at the  
19 hearing on Petitioner's Motion to Withdraw Guilty Plea. Peti-  
20 tioner informed the court that he was aware that this was his  
21 second offense, and indicated to the Court that he understood that  
22 he was not eligible for probation. After all the consequences of  
23 his guilty plea were clearly stated, Petitioner voluntarily  
24 withdrew his Motion to Withdraw his Guilty Plea and elected to  
25 proceed according to the terms of his Guilty Plea Agreement.

27           Since there was no reasonable probability that the  
28 outcome would have been different had Petitioner been informed of

1 the effect of his prior convictions earlier, the Strickland test  
2 is not met. Based upon a consideration of the totality of  
3 evidence and document on file in this case, this Court concludes  
4 that the assistance of Petitioner's counsel was not ineffective.

5 Petitioner's writ of habeas corpus is **DISMISSED**.

6 DATED: This 14<sup>th</sup> day of September 2000.

7   
8 ARCHIE E. BLAKE  
9 DISTRICT JUDGE

10 I hereby certify that I, Beatrice McMin, am an employee of the Honorable Archie E.  
Blake, District Judge, and that on this date pursuant to NRCP 5(b), I deposited for mailing at  
Yerington, Nevada, a true copy of the foregoing document addressed to:

11 Rick Lawton, Esq.  
12 Attorney at Law  
Post Office Box 1740  
Fallon, Nevada 89406

13 T. Laura Lui, Esq.  
14 Deputy District Attorney  
District Attorney's Office  
365 South Maine Street  
Fallon, Nevada 89406

15 DATED: This 14<sup>th</sup> day of September 2000.

16   
Beatrice McMin