

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DON COLLINS PETERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76843-COA

FILED

JUN 11 2019

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

ORDER OF AFFIRMANCE

Don Collins Peterson appeals from a judgment of conviction, entered pursuant to a guilty plea, of possession of a firearm by a prohibited person. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Peterson argues the district court erred by denying his pretrial motion to dismiss the indictment.¹ In his motion, Peterson argued he did not knowingly and voluntarily waive his right to a jury trial in his prior conviction for a domestic battery crime in Texas. And because he did not knowingly and voluntarily waive his right to a jury trial for that conviction he could not be prosecuted for possession of a firearm by a prohibited person. Therefore, the indictment should have been dismissed. Peterson provided an affidavit in support of his motion in which he stated he did not appear in court for his arraignment or sentence; he signed forms, but did not read them; and counsel never explained his constitutional rights to him.

The district court found Peterson was trying to collaterally attacking his prior Texas conviction, and that was not proper in a motion to


¹Peterson's claim was preserved for appeal. See NRS 174.035(3).

dismiss the indictment. Further, the district court found the "argument unsupported by the record of the conviction."

Peterson claims the district court incorrectly determined he could not collaterally attack the conviction. Even assuming, without deciding, this assertion is correct, Peterson still fails to demonstrate he is entitled to relief. The district court correctly found Peterson's argument was not supported by the record. The documents provided by the State show Peterson was present in the Texas court during the change of plea and sentencing, and he signed a waiver of his right to a jury trial. "[A] judgment of conviction is entitled to a presumption of regularity," and "the defendant has the burden of presenting evidence rebutting the presumption of regularity given to a judgment." *Dressler v. State*, 107 Nev. 686, 693, 819 P.2d 1288, 1292-93 (1991). A preponderance of the evidence supports the State's position that the prior judgment of conviction was constitutionally entered and Peterson validly waived his right to trial. *See id.* at 693, 819 P.2d at 1293. Therefore, we conclude the district court did not err by denying the motion, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nathan Tod Young, District Judge
Kristine L. Brown
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk