

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

PAUL ALLAN PIMENTEL,

Respondent.

No. 37223

FILED

JAN 02 2002

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent Paul Allan Pimentel's post-conviction petition for a writ of habeas corpus.

On September 6, 1996, Pimentel was convicted, pursuant to a jury verdict, of one count of being an ex-felon in possession of a firearm. The district court adjudged Pimentel a habitual criminal and sentenced him to serve a prison term of 66 to 165 months to run concurrent to a sentence Pimentel was serving in an unrelated case. Pimentel filed a direct appeal, alleging numerous instances of error. This court affirmed Pimentel's conviction.¹

On May 3, 1999, Pimentel filed a post-conviction petition for a writ of habeas corpus. In the petition, Pimentel alleged numerous instances of ineffective assistance of counsel. The State opposed the petition. After conducting an evidentiary hearing, the district court granted the petition, finding that counsel was ineffective for failing to file a motion to suppress. The State filed the instant appeal contending that Pimentel's counsel was not ineffective.

¹Pimentel v. State, Docket No. 29337 (Order Dismissing Appeal, February 5, 1999).

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must meet the two-part test set forth in Strickland v. Washington.² A petitioner must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's errors were so severe that, had the errors not been made, the outcome of the proceeding would have been different.³

The State argues that counsel was not ineffective for failing to file a motion to suppress because such a motion would have been denied. Specifically, the State argues a pretrial motion to suppress would have been denied because the search of the vehicle Pimentel was driving was justified under the inventory exception to the Fourth Amendment. We agree.

With respect to impoundment and inventory searches of vehicles, "[i]t is well-established that police officers need not comply with the Fourth Amendment's probable cause and warrant requirements when they are conducting an inventory search of an automobile in order to further some legitimate caretaking function."⁴ In fact, in certain instances, "[t]he police have a duty to inventory the contents of an automobile to protect against claims of theft and to protect the storage bailee against false charges."⁵ However, "[t]he inventory search must be carried out pursuant to standardized official department procedures and

²466 U.S. 668 (1984); accord Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

³Strickland, 466 U.S. at 687.

⁴Weintraub v. State, 110 Nev. 287, 288, 871 P.2d 339, 340 (1994).


⁵Collins v. State, 113 Nev. 1177, 1181, 946 P.2d 1055, 1058-59 (1997).

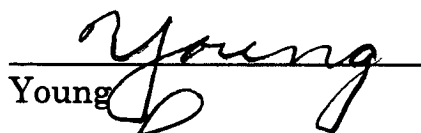
must be administered in good faith in order to pass constitutional muster.”⁶


In the instant case, we conclude that the district court erred in finding that the motion to suppress would have been granted. Had trial counsel filed a motion to suppress the firearm found in the vehicle, that motion would have been denied because the search was justified under the inventory exception to the Fourth Amendment.⁷ At the evidentiary hearing, the officers testified that they followed established procedures for impounding the vehicle, and that prior to impounding the vehicle, they unsuccessfully attempted to contact the owners. Because the owners of the vehicle could not be reached, the officers were justified in impounding and inventorying the vehicle as part of their community caretaking duty to protect and preserve the vehicle and its contents.⁸

Having considered the State’s contention and concluded that the district court erred in granting Pimental’s petition for a writ of habeas corpus, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Leavitt

⁶Weintraub, 110 Nev. at 288, 871 P.2d at 340.

⁷See Heffley v. State, 83 Nev. 100, 103-04, 423 P.2d 666, 668 (1967).

⁸See South Dakota v. Opperman, 428 U.S. 364, 368-69 (1976).

cc: Hon. Jerome Polaha, District Judge
Attorney General
Washoe County District Attorney
Nathalie Huynh
Washoe County Clerk