

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT C. SMITH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37551

**FILED**

JAN 02 2002

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

ORDER OF AFFIRMANCE

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

On June 1, 2000, the district court convicted appellant, pursuant to a guilty plea, of burglary. The district court adjudicated appellant a habitual criminal and sentenced appellant to serve a minimum term of sixty months to a maximum term of two hundred and forty months in the Nevada State Prison. No direct appeal was taken.

On January 4, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 20, 2001, the district court denied appellant's petition. This appeal followed.

First, appellant argued that his trial counsel was ineffective for failing to inform him of his right to a direct appeal. The written guilty plea agreement informed appellant of his limited right to a direct appeal. Appellant, during the plea canvass, indicated that his trial counsel had read and discussed the written guilty plea agreement with him. Thus, appellant cannot demonstrate that his counsel was ineffective in this regard.<sup>1</sup>

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<sup>1</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999); see also Strickland v. Washington, 466 U.S. 668 (1984).

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Next, appellant challenged the validity of his habitual criminal adjudication. Specifically, appellant argued: (1) the three prior felony convictions used in the habitual criminal adjudication were infirm because the guilty pleas in these prior convictions were involuntarily or unknowingly entered for a variety of reasons; (2) the district court unlawfully relied upon prior convictions in which the sentences had expired to adjudicate appellant a habitual criminal; (3) the district court failed to make a finding that it was "just and proper" to adjudicate appellant a habitual criminal; and (4) the district court should have applied the sentencing and credits statutes in place at the time of his prior convictions to his sentence in the instant case in order to avoid Ex Post Facto problems.

Based upon our review of the record on appeal, we conclude that the district court did not err in denying these claims. These claims fell outside the scope of claims permissible in a habeas corpus petition when the conviction is based upon a guilty plea.<sup>2</sup> Moreover, appellant waived these claims by failing to raise them in a direct appeal and failing to demonstrate good cause and prejudice for his failure to do so.<sup>3</sup>

Finally, appellant argued that his trial counsel failed to inform him of the consequences of his guilty plea. Specifically, appellant claimed that his trial counsel failed to inform him of the possibility that the district court may adjudicate him a habitual criminal.

Based upon our review of the record on appeal, we conclude that the district court did not err in determining that this claim lacked merit. The written guilty plea agreement, which appellant acknowledged reading, signing and understanding, states that "[t]he State has agreed to retain the right to argue at sentencing, including for treatment as a habitual criminal." An amended information containing notice of the State's intent to seek habitual criminal adjudication was filed during the

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<sup>2</sup>See NRS 34.810(1)(a) (limiting claims in a habeas corpus petition when the conviction is based upon a guilty plea to claims of ineffective assistance of counsel or claims challenging the validity of the plea).


<sup>3</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (holding "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

guilty plea canvass. During the plea canvass, appellant's trial counsel stated that the negotiations were that the State would seek habitual criminal adjudication under the small habitual criminal provision. Appellant affirmatively indicated that he understood the negotiations. Appellant further indicated that he had discussed the amended information with his attorney earlier in the morning. Thus, we conclude that appellant failed to demonstrate that his counsel was ineffective in this regard.<sup>4</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Young

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

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Valorie Vega, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Robert C. Smith  
Clark County Clerk

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<sup>4</sup>See Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

<sup>5</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

<sup>6</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.