

IN THE SUPREME COURT OF THE STATE OF NEVADA

WAYNE DOUGLAS SMITH,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
DON HELLING,  
Respondent.

No. 37935

FILED

SEP 09 2002

ORDER OF AFFIRMANCE

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

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

On September 18, 1998, the district court convicted Smith, pursuant to a guilty plea, of driving under the influence (DUI), third offense. The district court sentenced Smith to serve a term of 12 to 48 months in the Nevada State Prison, to run consecutively to a term he was serving in another case. Smith appealed his conviction and sentence, and this court remanded Smith's case for resentencing before a different judge because the State had breached the plea agreement at sentencing.<sup>1</sup> Smith filed a motion to set aside his guilty plea because of the breach; the State opposed the motion. The district court held a hearing and denied the motion. Smith was resentenced by another judge and received the same sentence as before. An amended judgment of conviction was filed on July 23, 1999.

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<sup>1</sup>Smith v. State, Docket No. 33164 (Order of Remand, February 26, 1999).

On April 6, 2000, Smith filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State did not file an opposition to the petition. Pursuant to NRS 34.750, the district court appointed counsel to represent Smith. Counsel filed a supplemental petition. The district court conducted an evidentiary hearing. On April 18, 2001, the district court denied Smith's petition. This appeal followed.<sup>2</sup>

In this appeal Smith contends that his counsel was ineffective for not raising an objection that Smith's prior misdemeanor DUI convictions were not adequately proven to fulfill his constitutional rights. Specifically, Smith contends that his attorney at the first sentencing should have advised him that one of his prior convictions, from Roseville, CA, was constitutionally infirm. He also contends that according to this court's Ronning case, the district court should have required the documentary proof of the prior convictions to be introduced into evidence at the second sentencing hearing after the case was remanded, apparently so that the second district court judge could verify the prior convictions.<sup>3</sup>

The district court found that counsel was not ineffective, and we agree. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>4</sup> Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.<sup>5</sup>

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<sup>2</sup>We note that Smith is represented by counsel in this appeal.

<sup>3</sup>Ronning v. State, 116 Nev. 32, 992 P.2d 260 (2000).

<sup>4</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>5</sup>See id.

As noted by the district court, the Roseville conviction was regular on its face and presumptively constitutional.<sup>6</sup> Even assuming a constitutional problem with the Roseville conviction existed, Smith's conviction of a third offense was still proper because the State showed evidence that Smith was convicted of another felony third DUI in Churchill County before the conviction in this case. Therefore, the district court correctly observed that the prosecution could have proven the third conviction without using the Roseville conviction.

We further conclude that Smith's interpretation of Ronning is incorrect. Ronning holds that even though the State failed to present evidence of prior convictions at sentencing, the prior convictions were properly proven because the district court had conducted extensive hearing as to the constitutional validity of the prior convictions, and the convictions had been entered into evidence prior to the sentencing hearing.<sup>7</sup> In the instant case, similarly, the district court conducted extensive hearing as to the constitutional validity of Smith's prior convictions at the hearing on Smith's motion to set aside his plea. This hearing took place before Smith's resentencing. Although the resentencing hearing was held before a different judge, we conclude that this fact alone does not negate the proof of the prior convictions. We also note that the district court asked counsel to provide legal authority for Smith's contention that the convictions needed to be reintroduced into evidence, and counsel could offer none.

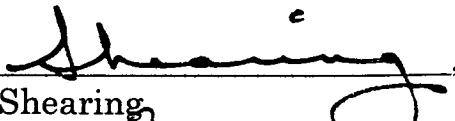
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<sup>6</sup>See, e.g., Dressler v. State, 107 Nev. 686, 819 P.2d 1288 (1991); Pettipas v. State, 106 Nev. 377, 794 P.2d 705 (1990).


<sup>7</sup>116 Nev. at 33-34, 992 P.2d at 261; see also NRS 484.3792(2).

Having reviewed the record and Smith's assignments of error,  
we conclude that the district court did not err, and we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

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

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Michael R. Griffin, District Judge  
Kay Ellen Armstrong  
Attorney General/Carson City  
Storey County District Attorney  
Storey County Clerk

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<sup>8</sup>We have considered all proper person documents filed or received in  
this matter, and we conclude that the relief requested is not warranted.