

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN LEE DIXON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38957

FILED

FEB 27 2002

ORDER OF AFFIRMANCE

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

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

Dixon was convicted, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced Dixon to serve a definite term of ten years in the Nevada State Prison. This court dismissed Dixon's direct appeal.¹

Dixon filed a proper person post-conviction petition for a writ of habeas corpus in the district court on September 15, 2000. The district court appointed counsel for Dixon, and counsel filed a supplemental petition on November 6, 2000. The State filed an answer. After holding an evidentiary hearing, the district court denied Dixon's petition. This appeal followed.

¹Dixon v. State, Docket No. 34430 (Order Dismissing Appeal, September 24, 1999).

In his petition, Dixon's sole contention is that his counsel was ineffective for failing to rebut information about dismissed charges which the district court may have considered when it sentenced Dixon to ten years, rather than to the five years recommended by the State in Dixon's plea agreement. We conclude that the district court did not err in denying this claim.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness and that he was prejudiced by that unreasonable performance.² In order to show prejudice following a judgment of conviction based on a guilty plea, a petitioner must demonstrate a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.³ We defer to the district court's factual findings made after an evidentiary hearing so long as they are supported by substantial evidence and are not clearly wrong.⁴

We conclude that the district court's finding that Dixon did not demonstrate ineffective assistance of counsel is supported by substantial

²Strickland v. Washington, 466 U.S. 668 (1984).

³See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

⁴Riley v. State, 110 Nev. 638, 878 P.2d 272 (1994).

evidence. Specifically, we conclude that counsel's alleged errors did not cause prejudice under the Strickland standard. By the time the information about the dismissed case was allegedly considered by the court, Dixon had already pleaded guilty. When the district court mentioned the dismissed case at sentencing, Dixon's counsel objected, and the objection was sustained. We also note that the district court is not bound by the State's recommendation of a particular sentence, and that it is entitled to consider information about dismissed charges at sentencing as long as it does not punish the defendant for prior uncharged crimes.⁵

We also conclude that Dixon's claim is barred by the doctrine of the law of the case. This court has stated that "[t]he law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same."⁶ Moreover, the doctrine of the law of the case "cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings."⁷ In this case, Dixon made the same argument on direct appeal – that the district court abused its discretion at sentencing by considering the dismissed charges. This court rejected the argument, and Dixon may not

⁵Bates v. State, 84 Nev. 43, 436 P.2d 27 (1968); Denson v. State, 112 Nev. 489, 915 P.2d 284 (1996).

⁶Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975) (quoting Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 38 (1969)).

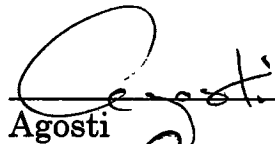
⁷Hall, 91 Nev. at 316, 535 P.2d at 799.

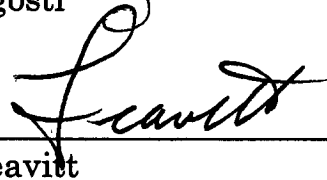
simply present it again under the rubric of ineffective assistance of counsel.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Steven R. Kosach, District Judge
Attorney General/Carson City
Washoe County District Attorney
Mary Lou Wilson
Washoe District Court Clerk