

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY C. HUNSUCKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39493

**FILED**

DEC 19 2002

ORDER OF AFFIRMANCE

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

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

On March 1, 2000, Hunsucker was convicted, pursuant to a jury verdict, of three counts of unlawful possession of a gaming device. The district court sentenced Hunsucker to serve three concurrent prison terms of 28 to 72 months. Hunsucker appealed, and this court affirmed his conviction.<sup>1</sup>

On September 26, 2001, Hunsucker 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 NRS 34.770, the district court declined to appoint counsel to represent Hunsucker or to

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<sup>1</sup>Hunsucker v. State, Docket No. 35584 (Order of Affirmance, October 3, 2000).

conduct an evidentiary hearing. On January 23, 2002, the district court denied Hunsucker's petition. This appeal followed.

In the petition, Hunsucker contended that his trial and appellate counsel were ineffective with regard to Hunsucker's motion to suppress. While acknowledging that his trial and appellate counsel challenged the legality of the search of Hunsucker's vehicle, Hunsucker contended that those challenges were deficient in failing to argue the search incident to arrest was improper because there was no probable cause for Hunsucker's arrest and because the search was not conducted contemporaneously to Hunsucker's arrest. We conclude that the district court did not err in rejecting Hunsucker's contention.

Hunsucker's claims with regard to counsels' conduct in litigating the search incident to arrest are barred by the doctrine of the law of the case because that issue was fully litigated in the district court and on direct appeal.<sup>2</sup> Although Hunsucker attempted to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered the issue of whether the warrantless search of Hunsucker's vehicle was justified as a search incident to arrest. In concluding that the search was a valid search incident to arrest, this court reviewed the motion to suppress, the State's opposition, and Hunsucker's reply, as well as the complete transcript of the suppression hearing. In the order of affirmance filed in Hunsucker's direct appeal, this court reasoned that the search incident to arrest was proper because "probable cause existed to

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<sup>2</sup>See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

arrest appellant for failure to stop for a police officer.” Additionally, in the order, this court noted that a search incident to arrest must be conducted contemporaneously to the arrest, and concluded that the search incident to arrest was lawful. Accordingly, the doctrine of the law of the case prevents relitigation of this claim.<sup>3</sup> Hunsucker may not avoid the doctrine of the law of the case “by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.”<sup>4</sup>

Hunsucker also contended that his appellate counsel was ineffective in failing to communicate with him and in failing to cite legal authority in the fast track statement. Hunsucker noted that, in the order of affirmance, this court expressly admonished appellate counsel that his failure to cite legal authority in the future may result in the imposition of sanctions. Even assuming appellate counsel was deficient in preparing the fast track statement, Hunsucker failed to show he was prejudiced by appellate counsel’s deficient performance because Hunsucker failed to set forth an appellate issue that had a reasonable likelihood of success on appeal. Accordingly, the district court did not err in rejecting Hunsucker’s claim.

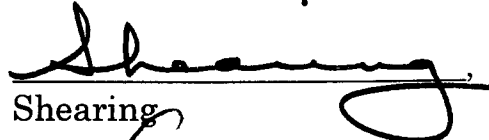
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<sup>3</sup>See id. at 316, 535 P.2d at 799.

<sup>4</sup>Id.

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.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

cc: Hon. John P. Davis, District Judge  
Wesley C. Hunsucker  
Attorney General/Carson City  
Mineral County District Attorney  
Mineral County Clerk

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<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).