

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM BRUNS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39532

**FILED**

JUL 25 2002

ORDER OF AFFIRMANCE

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

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

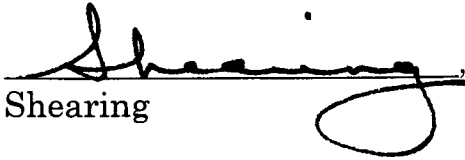
In the petition, Bruns presented claims of ineffective assistance of counsel. The district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>1</sup> Bruns has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Bruns has not demonstrated that the district court erred as a matter of law.

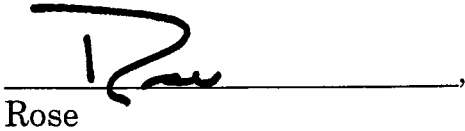
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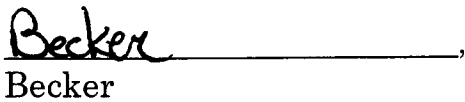
<sup>1</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Accordingly, for the reasons stated in the attached order of the district court, we

ORDER the judgment of the district court AFFIRMED.

  
Shearing, J.

  
Rose, J.

  
Becker, J.

cc: Hon. Peter I. Breen, District Judge  
Hardy & Associates  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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RONALD A. LONGTIN, JR.

BY P. Meacham

DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

WILLIAM BRUNS,

Petitioner,

v.

Case No. CR99P1011

THE STATE OF NEVADA,

Dept. No. 7

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND JUDGMENT

This matter came before the court on Bruns' petition for writ of habeas corpus (post-conviction). An evidentiary hearing has been conducted. This Court now being fully advised of the premises denies the relief requested.

FINDINGS OF FACT

1. On May 5, 1999, Bruns was arrested and charged with one count of manufacturing a controlled substance.

2. Following the arrest, the Washoe County Public Defender's Office was appointed to represent Bruns.

a. Richard Molezzo represented Bruns in the Reno Justice

1 Court; Vaun Hall represented Bruns during the arraignment  
2 and change of plea proceeding in district court; and Jeremy  
3 Bosler represented Bruns at sentencing in district court.

4 b. Given their respective training and experience, each of  
5 the lawyers was well qualified to represent Bruns in this  
6 case.

7 3. In anticipation of the preliminary hearing, the State  
8 extended a plea bargain to Bruns which stipulated that, in  
9 exchange for Bruns' plea to the manufacturing charge, the State  
10 would dismiss a charge alleging manufacture of drug  
11 paraphernalia, not object to probation if recommended, and not  
12 object to a diversion program in the defendant qualifies.

13 4. Defense counsel advised Bruns to accept the plea bargain and  
14 waive the preliminary hearing. Bruns agreed.

15 a. Defense counsel's advice was reasonable under  
16 prevailing professional norms.

17 b. Defense counsel's advice was preceded by a reasonably  
18 complete investigation of the facts and available defenses.

19 i. Based on this investigation, counsel concluded  
20 that Bruns was not manufacturing drugs for personal  
21 use, but as part of a larger conspiracy to manufacture  
22 and distribute drugs. This conclusion was supported by  
23 admissions Bruns made the police after his arrest, as  
24 well as the attendant facts and circumstances.

25 ii. Had a preliminary hearing been conducted in the  
26 justice court, there is no reasonable probability that

1 the magistrate would not have bound Bruns over for  
2 trial, and similarly, in the event of a bind over,  
3 there is no reasonable probability that a district  
4 judge, acting reasonably, would have granted a pretrial  
5 petition for writ of habeas corpus challenging the  
6 sufficiency of evidence.

7 c. Prior to advising Bruns to accept the plea bargain,  
8 defense counsel did not make a motion to suppress, because  
9 the stop and arrest which preceded the search and seizure  
10 were lawful,<sup>1</sup> and the search and seizure, to the extent that  
11 Bruns had standing to complain,<sup>2</sup> were conducted pursuant to  
12 an exception to the warrant requirement.<sup>3</sup>

13 i. The evidence in question was seized from a vehicle  
14 driven by Bruns on the night of the arrest.

15 aa. The police stopped the vehicle lawfully  
16 following a traffic violation committed in their  
17 presence.

18 bb. Once the stop was effected and Bruns  
19

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20 <sup>1</sup>Stuart v. State, 94 Nev. 721, 587 P.2d 33 (1978).

21 <sup>2</sup>Had Bruns filed a motion to suppress, he bore the burden of  
22 proof on standing. Simmons v. United States, 390 U.S. 377; 389-90  
23 (1968); Harper v. State, 84 Nev. 223, 440 P.2d 893 (1968); cf.,  
24 Scott v. State, 110 Nev. 622, 628, 877 P.2d 503 (1994) - non owner  
25 driver who can show lawful possession of a vehicle may have  
standing to challenge a search. Given the evidence presented in  
the habeas proceeding, the court believes Bruns did not, and could  
not, sustain his burden of proof. For completeness, however, the  
court will assume Bruns did meet his burden.

26 <sup>3</sup>New York v. Belton, 453 U.S. 454 (1981).

1 identified himself, the police learned the vehicle  
2 was reported stolen and a warrant had been issued  
3 for Bruns' arrest on an unrelated charge. These  
4 events culminated in Bruns' arrest.<sup>4</sup>

5 cc. Incident to Bruns' arrest, the constitutional  
6 validity of which has never been challenged, the  
7 police conducted a warrantless search of the  
8 vehicle which was reasonable in scope and duration  
9 and ultimately seized the contraband.

10 ii. Counsel's decision to forgo the motion to suppress  
11 was reasonable under prevailing professional norms,  
12 because the motion, had it been made, enjoyed no  
13 reasonable probability of being granted.

14 5. On June 18, 1999, Bruns entered his plea to the  
15 manufacturing charge. The plea was knowingly, voluntarily and  
16 intelligently entered.

17 6. On July 21, 1999, Bruns was sentenced to 24 to 60 months in  
18 prison. Bosler testified credibly at the habeas proceeding that,  
19 prior to the imposition of sentence, Bruns had gone over the

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20  
21 <sup>4</sup>Bruns testified during the habeas proceeding that a woman  
22 named Carmen gave him permission to drive the vehicle, but Bruns  
23 presented no evidence suggesting Carmen was authorized to grant him  
24 permission or was otherwise in lawful possession of the vehicle  
25 herself. The claim that the vehicle was stolen was un rebutted  
26 during the habeas proceeding. In addition, Bruns presented no  
evidence suggesting that the stolen vehicle report was false.  
Furthermore, Bruns presented no evidence that he, as the driver and  
sole occupant of the vehicle, enjoyed a reasonable expectation of  
privacy respecting the search of the vehicle. And finally, Bruns  
presented no evidence suggesting that the warrant pursuant to which  
he was arrested was invalid.

1 presentence report thoroughly, and had no corrections or  
2 additions to make to it.

3 CONCLUSIONS OF LAW

4 Bruns was afforded effective assistance of counsel at  
5 all relevant times within the contemplation of Hill v. Lockhart,  
6 474 U.S. 52 (1985), Strickland v. Washington, 466 U.S. 668 (1984)  
7 and their local progeny.

8 JUDGMENT

9 It is hereby the judgment and order of this Court that  
10 Bruns' Petition of Writ of Habeas Corpus (Post-Conviction) is  
11 hereby denied.

12 DATED this 22 day of March, 2002.

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DISTRICT JUDGE