

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY TERRELL HAMPTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40056

FILED

APR 28 2003

ORDER OF AFFIRMANCE

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

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

On June 16, 1998, appellant Anthony Terrell Hampton was convicted, pursuant to a jury verdict, of burglary (count I), first-degree kidnapping (count II), and robbery (count III). The district court sentenced Hampton to serve a prison term of 16 to 72 months for count I, a consecutive prison term of life with parole eligibility in 5 years for count II, and a consecutive prison term of 26 to 120 months for count III. Hampton appealed, and this court affirmed his convictions for counts I and III and reversed his conviction for count II.¹ The remittitur issued on January 7, 2002.

On May 21, 2002, Hampton filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court

¹Hampton v. State, Docket No. 32378 (Order Affirming In Part and Vacating In Part, December 4, 2001).

declined to appoint counsel to represent Hampton or to conduct an evidentiary hearing. On August 22, 2002, the district court denied Hampton's petition. This timely appeal followed.

In the petition, Hampton argued that his trial counsel was ineffective at the sentencing proceeding for failing to argue for concurrent sentences. In particular, Hampton claimed that his trial counsel should have requested that the district court order the counts to run concurrently because they arose from a single act, namely, "entering a hotel room with a prostitute and removing [from a single victim] a suitcase and a briefcase containing credit cards, . . . approximately \$2500.00 in traveler's checks and about two hundred dollars in cash." We conclude that the district court did not err in rejecting Hampton's claim.

To establish ineffective assistance of counsel at sentencing, a petitioner must show both that counsel's performance fell below an objective standard of reasonableness and that the deficient performance prejudiced the defense.² To prove prejudice, a petitioner must show a reasonable probability that but for counsel's errors the result of the sentencing proceeding would have been different.³

In this case, the district court rejected Hampton's claim that his trial counsel was ineffective at sentencing for failing to argue for concurrent sentences. In particular, the district court found that

²Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

³See Strickland, 466 U.S. at 694.

Hampton's claim was belied by the record because "trial counsel did in fact aggressively argue that he should receive concurrent sentences." We conclude that the district court's finding is supported by substantial evidence.⁴


At the sentencing hearing, the State argued for consecutive sentences based on Hampton's prior record, noting that he had "22 prior arrests at the age of 34, including three felony convictions" and characterizing him as a "violent thief." By contrast, Hampton's trial counsel argued that consecutive sentences were "inappropriate in this case" because the events occurred within a ten minute period, there was only one victim, and there was no weapon used against that victim. Prior to imposing sentence, the district court acknowledged Hampton's counsel's argument and then explained its reason for ordering consecutive sentences: "Mr. Hampton, the thing that is so damning is your prior record." Because Hampton's trial counsel argued for concurrent sentences, Hampton's claim that his trial counsel was ineffective for failing to do so is belied by the record. Moreover, even assuming trial counsel could have made additional arguments with respect to concurrent sentencing, Hampton failed to show that he was prejudiced by that allegedly deficient conduct because the record indicates that the district court imposed consecutive sentences based, in large part, on Hampton's prior criminal


⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994); see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

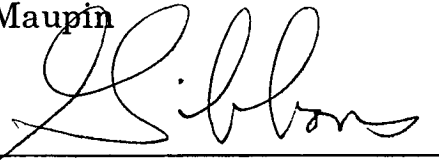
history. Accordingly, the district court did not err in rejecting Hampton's claim.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Anthony Terrell Hampton
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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