

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT J. COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40903

FILED

JUN 05 2003

ORDER OF AFFIRMANCE

JANETTE 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 Robert J. Collins' post-conviction petition for a writ of habeas corpus.

On August 28, 1995, Collins was convicted, pursuant to a jury verdict, of one count of burglary. The district court sentenced Collins to serve a prison term of 4 years. Collins appealed, and this court affirmed his conviction.¹ Collins filed a petition for rehearing, which this court denied on May 12, 1998. The remittitur issued on May 20, 1998.

On May 18, 1999, Collins filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Collins or to conduct an evidentiary hearing. On June 21, 1999, the district court denied the petition, ruling that it was untimely and procedurally barred. Collins appealed, and this court remanded the

¹Collins v. State, 113 Nev. 1177, 946 P.2d 1055 (1997).

matter to the district court, concluding that the petition was timely because it was filed within one year of this court's issuance of the remittitur in Collins' direct appeal.²

On July 6, 2000, Collins filed a proper person amended petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Collins, and counsel supplemented the amended petition. After conducting an evidentiary hearing, the district court denied the petition. This timely appeal followed.

Collins contends that the district court erred in rejecting his claim that his trial counsel was ineffective in litigating Collins' motion to suppress. Although Collins acknowledges that his trial counsel challenged the legality of his warrantless arrest and the police officer's warrantless search of his vehicle, Collins contends that challenge was deficient because trial counsel failed to uncover and elicit evidence that the bags searched by the police officer were closed. Because the police officer testified that the bags he searched were open, Collins asserts that the evidence that the bags were closed would have directly contradicted the police officer's statement thereby impugning his credibility. The district court did not err in rejecting this contention.

²Collins v. Warden, Docket No. 34534 (Order of Remand, August 30, 1999).

The constitutionality of Collins' warrantless arrest and the subsequent warrantless search of his vehicle were fully litigated in the district court and on direct appeal. In the published opinion filed in Collins' direct appeal, this court held that Collins' arrest was proper under NRS 484.795(1), which authorizes a peace officer to arrest an individual who has committed a traffic violation if there are reasonable grounds to believe the individual will disregard the promise to appear.³ This court determined that the police officer had reasonable grounds to believe that Collins would disregard the promise to appear because he initially refused to produce his driver's license, registration, and insurance information, and then deliberately crumpled up the citation the officer issued him.⁴

This court further concluded that the subsequent search of Collins' vehicle was justified pursuant to the impoundment and inventory exception to the Fourth Amendment of the United States Constitution. The car was properly impounded because Collins' vehicle was parked in an aisleway, rather than a designated parking space at the time he was arrested, and there was no evidence that the car or its valuables would remain safe.⁵ This court also determined that the inventory search was properly conducted because the inventory was taken by a police officer fulfilling his duty to inventory the contents of an automobile to protect

³113 Nev. at 1180, 946 P.2d at 1058.

⁴Id.

⁵Id. at 1181, 946 P.2d at 1058-59.

fulfilling his duty to inventory the contents of an automobile to protect against claims of theft.⁶

In the instant case, the district court did not err in rejecting Collins' claim of ineffective assistance because, in light of our prior ruling, Collins could not establish that his counsel's performance fell below an objective standard of reasonableness or that counsel's allegedly deficient performance prejudiced Collins' defense.⁷ Even assuming the bags were closed as Collins alleges, a police officer is allowed to examine the contents of a closed container inside a vehicle within the course of a valid inventory search.⁸

Additionally, the district court conducted an evidentiary hearing on the merits of Collins' claims and found that the additional evidence that appellant alleged his counsel should have presented would not have affected the outcome of the suppression hearing. Collins has not shown that the district court's factual finding is unsupported by substantial evidence or that it is clearly wrong.⁹ Further, the district court found that the contradictory evidence as to whether the bags were open or closed was not sufficient to demonstrate that the police officer's testimony was false.

⁶Id.

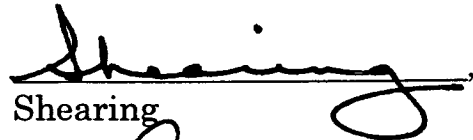
⁷Strickland v. Washington, 466 U.S. 668, 687 (1984).

⁸See Colorado v. Bertine, 479 U.S. 367, 369-70 (1987).


⁹See Riley v. State, 110 Nev. 638, 878 P.2d 272 (1994).

Accordingly, we conclude that the district court did not err in rejecting Collins' claim that his trial counsel was ineffective in litigating the motion to suppress. Having considered Collins' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Peter I. Breen, District Judge
Nathalie Huynh
Attorney General Brian Sandoval/Carson City
Washoe District Court Clerk