

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBARO CAVADRA A/K/A ALVIN  
SAVEDRA TORRES A/K/A ALVARO  
SAAVEDRA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41396

FILED

MAR 18 2004

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

ORDER OF AFFIRMANCE

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

On August 20, 2002, the district court convicted Cavadra, pursuant to a guilty plea, of one count of felony grand larceny. The district court adjudicated Cavadra a habitual criminal pursuant to NRS 207.010 and sentenced him to serve a term of 190 months in the Nevada State Prison with the possibility of parole in 60 months. No direct appeal was taken.

On February 7, 2003, Cavadra filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss Cavadra's petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

represent Cavadra or to conduct an evidentiary hearing. On April 15, 2003, the district court denied Cavadra's petition. This appeal followed.<sup>1</sup>

In his petition, Cavadra raised numerous allegations of ineffective assistance of counsel. A petition challenging a judgment of conviction based on a guilty plea may only allege that the guilty plea was entered without the effective assistance of counsel, or was entered unknowingly and involuntarily.<sup>2</sup> To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.<sup>3</sup> A petitioner must further show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>4</sup>

First, Cavadra contended that his counsel was ineffective for not challenging the district court's reliance upon two of his prior felony convictions—possession of a credit card without the owner's consent and larceny from a person—in adjudicating him a habitual criminal pursuant to NRS 207.010. Cavadra contended that his counsel should have argued that these prior felony offenses were non-violent and "relatively minor" in nature.

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<sup>1</sup>We note that on July 3, 2003, pursuant to an order by this court, the district court issued an amended order denying Cavadra's petition to reflect that Cavadra was proceeding in proper person.

<sup>2</sup>See NRS 34.810(1)(a).

<sup>3</sup>See Hill v. Lockhart, 474 U.S. 52, 57 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

<sup>4</sup>Kirksey, 112 Nev. at 988, 923 P.2d at 1107 (quoting Hill, 474 U.S. at 59).

This court, however, has held that "NRS 207.010 makes no special allowance for non-violent crimes."<sup>5</sup> This court has also rejected arguments that a district court abused its discretion in adjudicating a defendant a habitual criminal because the prior felony convictions relied upon by the district court were for "relatively minor" offenses.<sup>6</sup> Cavadra failed to show that his counsel was ineffective by not challenging his habitual criminal adjudication on these grounds. Therefore, the district court properly denied Cavadra relief on this allegation.

Second, Cavadra contended that his counsel was ineffective for failing to challenge the district court's habitual criminal adjudication on the ground that he was not represented by counsel during most of his prior misdemeanor convictions. NRS 207.010, however, provides that a district court may adjudicate a defendant a habitual criminal if they have at least three prior felony convictions. The record shows that the State presented the district court with copies of ten certified judgments of conviction at Cavadra's sentencing hearing. Cavadra's counsel acknowledged that at least three of these prior judgments of conviction involved felonies. Cavadra did not contend in his petition that these three felony convictions were invalid. Thus, even if his allegation was true, and he was not represented by counsel during most of his prior misdemeanor convictions, Cavadra cannot show how he was prejudiced by the performance of his counsel with respect to this issue because his felony convictions provided

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<sup>5</sup>Tillema v. State, 112 Nev. 266, 271, 914 P.2d 605, 608 (1996) (quoting Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992)).

<sup>6</sup>See McGervey v. State, 114 Nev. 460, 467, 958 P.2d 1203, 1208 (1998); but cf. Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990).

an independent basis for the district court to adjudicate him a habitual criminal pursuant to NRS 207.010. Moreover, Cavadra failed to specify in which of his prior misdemeanor convictions he was not represented by counsel.<sup>7</sup> Therefore, the district court properly denied Cavadra relief on this allegation.

Third, Cavadra contended that his counsel failed to adequately present mitigating evidence on Cavadra's behalf during his sentencing hearing. Specifically, Cavadra contended that his counsel failed to argue that Cavadra's criminal behavior was the result of his serious drug problem. Contrary to Cavadra's allegation, the record reveals that Cavadra's counsel did argue that Cavadra should not be sentenced as a habitual criminal because Cavadra had "a severe drug problem," as well as educational and mental health issues. The record also reveals that the district court was aware of these circumstances when the district court acknowledged during the sentencing hearing that "[n]obody's as patient or as compassionate as I am when it comes to people with drug problems or with situations like this, but there's got to be a point where you've got to protect society." Thus, Cavadra's allegation was belied by the record.<sup>8</sup> Cavadra has otherwise failed to specify how his counsel's performance during his sentencing hearing was inadequate, or what other mitigating circumstances existed in his case that his counsel should have argued.<sup>9</sup> Therefore, the district court properly denied Cavadra relief on this allegation.

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<sup>7</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

<sup>8</sup>Id. at 503, 686 P.2d at 225.

<sup>9</sup>Id. at 502, 686 P.2 at 225.

Finally, Cavadra generally contended that his counsel was ineffective for failing to challenge the constitutional sufficiency of the prior judgments of conviction relied upon by the district court in adjudicating him a habitual criminal and to challenge the evidence underlying those convictions. Cavadra, however, failed to specify how his prior judgments of conviction were constitutionally infirm and on what basis his counsel could have successfully challenged them.<sup>10</sup> Therefore, the district court properly denied Cavadra relief on this allegation.

Cavadra raised several allegations independent from his claims of ineffective assistance of counsel. Specifically, Cavadra contended that NRS 207.010 was unconstitutional and the district court made several errors in adjudicating him a habitual criminal. These allegations should have been raised by Cavadra on direct appeal and are waived from being reviewed in his petition.<sup>11</sup> Therefore, the district court properly denied Cavadra relief on these allegations.

Cavadra also contended that his constitutional rights were violated because he was not represented by counsel when the State filed the amended information charging him as a habitual criminal and he was not represented by counsel when he entered his guilty plea. Contrary to Cavadra's allegations, the record reveals that Cavadra was represented by counsel during all relevant proceedings of his case, including: his arraignment, his signing of the plea agreement, his plea canvass, and his

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<sup>10</sup>Id.

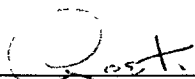
<sup>11</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); NRS 34.810(1)(b)(2).


sentencing hearing. The record also shows that Cavadra was represented by counsel during the hearing in which the State filed the amended information. Cavadra's allegations are belied by the record.<sup>12</sup> Therefore, the district court properly denied Cavadra relief on these allegations.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Cavadra is not entitled to relief and that briefing and oral argument are unwarranted.<sup>13</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael A. Cherry, District Judge  
Albaro Cavadra  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>12</sup>See Hargrove, 100 Nev. at 503, 686 P.2d at 225.

<sup>13</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).