

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN HOUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41775

FILED
MAY 26 2004
CLERK OF COURT

MAY 26 2004

ORDER OF AFFIRMANCE

L. Castillo

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

On February 20, 2001, the district court convicted Houston, pursuant to a jury verdict, of one count of conspiracy to commit murder, and three counts each of attempted murder and discharging a firearm out of a motor vehicle. The district court sentenced Houston to serve a period totaling 120 to 432 months in the Nevada State Prison. This court affirmed Houston's judgment of conviction and sentence on appeal.¹ The remittitur issued on April 23, 2002.

On March 24, 2003, Houston filed a proper person post-conviction petition for a writ of habeas corpus in the district court. On May 1, 2003, Houston filed a memorandum in support of his petition. The State filed an opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Houston or to conduct an

¹Houston v. State, Docket No. 37392 (Order of Affirmance, March 29, 2002).

evidentiary hearing. On August 15, 2003, the district court denied Houston's petition. This appeal followed.²

In his petition, Houston raised a claim of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.³ A petitioner must further establish that there is a reasonable probability that in the absence of counsel's errors, the results of the proceedings would have been different.⁴ The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.⁵

Houston contended that his trial counsel was ineffective for failing to file a motion to dismiss the three counts of discharging a firearm out of a motor vehicle. Houston alleged that these charges were impermissibly redundant because he was also charged with three counts of attempted murder.

"The Double Jeopardy Clause of United States Constitution protects defendants from multiple punishments for the same offense."⁶ In determining whether a defendant's right to be free from double jeopardy

²Because the district court stated that it had considered all documents on file at the time its order was issued, we regard Houston's memorandum in support of his petition as a proper supplement to his original petition for a writ of habeas corpus.

³See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

⁴Id.

⁵Strickland, 466 U.S. at 697.

⁶Salazar v. State, 119 Nev. ___, ___, 70 P.3d 749, 751 (2003); see also U.S. Const. amend. V.

has been violated, this court utilizes the test set forth in Blockburger v. United States.⁷ "Under this test, if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense and the Double Jeopardy Clause prohibits a conviction for both offenses."⁸ Pursuant to the Blockburger test, discharging a firearm out of a motor vehicle is a separate offense from attempted murder. The attempted murder charges alone required the specific intent to commit harm.⁹ Conversely, the charges for discharging a firearm out of a motor vehicle required proof that a person wantonly or maliciously caused a firearm to be discharged from a vehicle.¹⁰

Although two offenses may be separate under the Blockburger test, this court will reverse "redundant convictions that do not comport with legislative intent."¹¹ In resolving whether convictions are redundant, "[t]he question is whether the material or significant part of each charge is the same, even if the offenses are not the same. Thus, where a defendant is convicted of two offenses that, as charged, punish the exact same illegal act, the convictions are redundant."¹²

⁷284 U.S. 299 (1932).

⁸Salazar, 119 Nev. at ___, 70 P.3d at 751 (internal quotations and citations omitted).

⁹See NRS 193.330; 200.010.

¹⁰See NRS 202.287.


¹¹Albitre v. State, 103 Nev. 281, 283, 738 P.2d 1307, 1309 (1987).

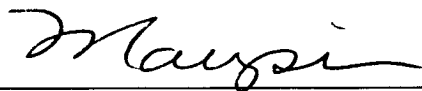
¹²State v. District Court, 116 Nev. 127, 136, 994 P.2d 692, 698 (2000) (further providing that "[t]he issue . . . is whether the gravamen of the charged offenses is the same such that it can be said that the legislature did not intend multiple convictions").

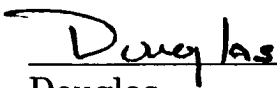
We conclude that under the analysis invalidating redundant convictions, the gravamen of the offenses Houston challenged in the instant case were not the same. The gravamen of Houston's attempted murder charges was that he had the specific intent to murder three individuals. In contrast, the gravamen of Houston's firearm charges was that he discharged a gun while inside a vehicle. Consequently, Houston failed to demonstrate that the charges were impermissibly redundant, such that the results of his trial would have been different if his trial counsel had filed a motion to dismiss the three counts of discharging a firearm out of a motor vehicle. As such, Houston did not establish that his trial counsel was ineffective on this issue, and the district court did not err in denying the claim.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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

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