

IN THE SUPREME COURT OF THE STATE OF NEVADA

FORREST SCOTT HARMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42052

FILED

MAY 28 2004

ORDER OF AFFIRMANCE

JANETTE M. GLOOM,
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

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

On June 12, 2001, the district court convicted Harman, pursuant to a guilty plea, of possession of a controlled substance. The district court adjudicated Harman a habitual criminal and sentenced him to serve a term of life in the Nevada State Prison with the possibility of parole after a minimum of ten years. This court affirmed the district court's judgment of conviction, and the remittitur issued on April 2, 2002.¹ On August 11, 2003, the district court entered a corrected judgment of conviction to correct a clerical error.

On October 21, 2002, Harman filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State filed a motion to dismiss. Harman filed a response. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

¹Harman v. State, Docket No. 38182 (Order of Affirmance, March 7, 2002).

represent Harman or to conduct an evidentiary hearing. On August 13, 2003, the district court denied Harman's petition. This appeal followed.

In his petition, Harman raised three claims of ineffective assistance of trial counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.² Further, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."³ "A reasonable probability is a probability sufficient to undermine confidence in the outcome."⁴

First, Harman claimed that trial counsel was ineffective for failing to correct or challenge an error pertaining to the prior felony convictions listed in the information. Our review of the record reveals that the error was a clerical error and the district court subsequently corrected the error by entering an amended judgment of conviction. We further note that in his response to the State's motion to dismiss, Harman conceded that it was a clerical error and he was not prejudiced by this error. Therefore, Harman failed to demonstrate that counsel was ineffective on this issue.

²Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

³Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁴Id. (quoting Strickland, 466 U.S. at 694).

Second, Harman claimed that trial counsel was ineffective for failing to argue that Harman's prior convictions were insufficient to support a life sentence. To this end, Harman asserted that his California plea agreements limited the enhancements that he could receive for subsequent felony convictions, and argued that the district court was required to give full faith and credit to these limitations. We note that in his signed guilty plea agreement, Harman acknowledged that the State was free to seek habitual criminal treatment and that he might be imprisoned for "life with the possibility of parole beginning after ten years have been served." Based on this acknowledgement, we conclude that Harman failed to show a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Therefore, Harman failed to demonstrate that counsel was ineffective on this issue.⁵

Third, Harman claimed that trial counsel was ineffective for failing to challenge the district court's usurpation of his right to a jury determination of the facts used to adjudicate him a habitual criminal. We have previously held that "[o]ne facing adjudication as a habitual criminal and the consequent life imprisonment is not entitled to a trial by jury."⁶ Therefore, Harman failed to demonstrate that counsel was ineffective on this issue.

⁵To the extent that Harman also claimed ineffective assistance of appellate counsel, we conclude that he failed to demonstrate that this claim "would have a reasonable probability of success on appeal." Kirksey, 112 Nev. at 998, 923 P.2d at 1113.

⁶Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993) (citing Howard v. State, 83 Nev. 53, 422 P.2d 548 (1967)).

Having reviewed the records on appeal and for the reasons set forth above, we conclude that Harman is not entitled to relief and that briefing and oral argument are unwarranted.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁸

Becker _____, J.
Becker

Agosti _____, J.
Agosti

Gibbons _____, J.
Gibbons

cc: Hon. Jerome Polaha, District Judge
Forrest Scott Harman
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

⁸We have reviewed all documents that Harman has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Harman has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.