

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES M. ELLIOTT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42574

FILED

JUN 28 2004

ORDER OF AFFIRMANCE

JANETIE M. BLOOM
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 James Elliott's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On July 10, 2003, the district court convicted Elliott, pursuant to a guilty plea, of one count each of indecent exposure and failure to register as a sex offender. The district court sentenced Elliott to serve two concurrent terms of 12 to 30 months in the Nevada State Prison. No direct appeal was taken.

On September 16, 2003, Elliott filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Elliott filed a reply. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Elliott or to conduct an evidentiary hearing. On December 18, 2003, the district court denied Elliott's petition. This appeal followed.

In his petition, Elliott raised a claim of ineffective assistance of trial counsel. To state a claim of ineffective assistance of trial counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness.¹ A petitioner must further establish "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."² The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.³

Elliott claimed that his trial counsel was ineffective for advising him to plead guilty to the charge of failure to register as a sex offender because he was not guilty of the offense.⁴ Specifically, Elliott contended that he did not commit a "sexual offense" pursuant to NRS

¹See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

²Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

³Strickland, 466 U.S. at 697.

⁴To the extent that Elliott raised this claim independently from his ineffective assistance of counsel claim, we note that it is outside the scope of a post-conviction petition for a writ of habeas corpus. See NRS 34.810(1)(a). Moreover, as discussed below, this claim is without merit.

179D.620(12) because his prior conviction for indecent exposure in California was a misdemeanor.⁵

We conclude that Elliott's claim is entirely without merit. NRS 179D.620 provides a definition of "sexual offense" for the purposes of community notification of sex offenders.⁶ However, NRS 179D.410 provides a slightly different definition of "sexual offense" for the purposes of sex offender registration.⁷ NRS 179D.410(12) states that indecent or obscene exposure—whether a felony or misdemeanor—is a "sexual offense." Further NRS 179D.410(18) provides that a "sexual offense" is "[a]n offense committed in another jurisdiction that, if committed in this state, would be an offense listed in this section." Elliott's conviction for misdemeanor indecent exposure in California therefore falls under the definition of "sexual offense" as used in the statute requiring sex offender registration.⁸ Consequently, Elliott failed to demonstrate that his trial counsel was ineffective for advising him to plead guilty to the crime of failure to register as a sex offender, and the district court did not err in denying this claim.

⁵NRS 179D.620(12) provides that indecent or obscene exposure is a "sexual offense" if punished as a felony.


⁶See NRS 179D.600-770.

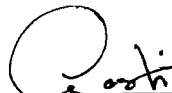
⁷See NRS 179D.350-490.

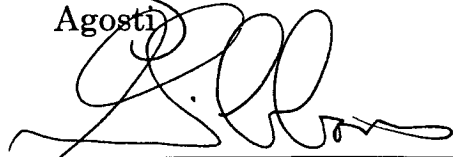
⁸See NRS 179D.460 (providing that anyone convicted of a sexual offense after July 1, 1956 shall register with the local law enforcement agency).

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Elliott is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁰


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge
James M. Elliott
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁰We have received Elliott's proper person motion to consolidate his appeals. We decline to consolidate this appeal with Elliott's appeal pending in Docket No. 43018.