

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EARL WARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42602

FILED

MAY 06 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant John Earl Ward's post-conviction petition for a writ of habeas corpus.

On June 27, 2001, the district court convicted Ward, pursuant to a guilty plea, of possession of a stolen motor vehicle (count I) and eluding a police officer (count II). The district court sentenced Ward to serve a prison term of 48 to 120 months for count I and a consecutive prison term of 28 to 72 months for count II. Ward filed a direct appeal, and this court affirmed the judgment of conviction.¹ The remittitur issued on November 7, 2001.

On March 11, 2002, Ward filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Ward, and counsel supplemented the petition. The State filed a motion to dismiss the petition, arguing that Ward's claims were belied by the record. Counsel for Ward filed an opposition to the State's motion to dismiss. The district court granted the

¹Ward v. State, Docket No. 38183 (Order of Affirmance, October 12, 2001).

State's motion in part dismissing the majority of Ward's claims, but concluded that Ward was entitled to an evidentiary hearing on his claim that trial counsel was ineffective at sentencing. After conducting the evidentiary hearing, the district court denied the petition. This appeal followed.

Ward contends that the district court erred in rejecting his claims of ineffective assistance of counsel. In particular, Ward claims that his trial counsel was ineffective for failing to: (1) present compelling mitigating evidence at sentencing; (2) object to several prejudicial and misleading statements made by the prosecutor at sentencing; (3) investigate and present the defense of intoxication;² and (4) ensure that the preliminary hearing proceeded as scheduled.

In this case, the district court found that counsel was not ineffective under the standard set forth in Strickland v. Washington.³ The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁴ Ward has not demonstrated that the district court's finding that trial counsel was not ineffective was not supported by substantial evidence or was clearly

²Ward also alleges that the district court erred in rejecting the claim that his conviction was invalid because he was too intoxicated to form the requisite intent necessary to be guilty of the crime of possession of a stolen motor vehicle. We note that the district court did not err in dismissing his claim because it falls outside the narrow scope of issues that may be raised in a post-conviction petition challenging a judgment of conviction upon a guilty plea. See NRS 34.810(a).

³466 U.S. 668 (1984).

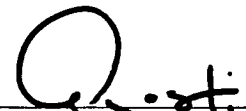
⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


wrong. Moreover, Ward has not demonstrated that the district court erred as a matter of law.

Having considered Ward's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Nathalie Huynh
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk