

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIGMUN LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42604

FILED

JUN 25 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant was originally convicted, pursuant to a guilty plea, of one count of invasion of the home. The judgment of conviction was entered on February 28, 2003. Appellant did not file a direct appeal. On September 5, 2003, counsel for appellant filed a post-conviction habeas petition.

Appellant first argues that his conviction was illegal as a matter of law because he could not have committed invasion of a home in which he was a lawful tenant. NRS 34. 810(1)(a) provides that a court shall dismiss a petition for post-conviction relief if "[t]he petitioner's conviction was upon a plea of guilty and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." Because appellant's first claim is not based on a challenge to the validity of his plea or the ineffective assistance of counsel, the district court did not err by dismissing as to that claim.

Appellant also argues that his counsel was ineffective because counsel allowed appellant to plead guilty to an offense to which appellant

had "a complete defense." This argument is based on appellant's assertion that at the time of the offense, he was a legal tenant of the house which he forcibly entered. However, at the entry of his guilty plea, appellant conceded that at the time of the offense, he had been evicted from the house for failure to pay rent. This argument is therefore without merit, and the district court did not err by denying the petition as to this issue.

Having considered appellant's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Robert M. Draskovich, Chtd.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk