

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES QUENTON HUNTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42613

FILED

JUL 27 2004

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant James Hunter's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

On June 13, 2003, the district court convicted Hunter, pursuant to a guilty plea, of driving under the influence of alcohol (felony). The district court sentenced Hunter to serve a term of twelve to thirty months in the Nevada State Prison. Hunter did not file a direct appeal.

On December 12, 2003, Hunter filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent Hunter or to conduct an evidentiary hearing. On December 17, 2003, the district court denied Hunter's petition. This appeal followed.

In his petition, Hunter first 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

Hunter claimed that his trial counsel was ineffective for failing to object to the use of a 2001 "traffic citation" to enhance his conviction to a felony. In his petition, Hunter appeared to be under the misconception that because he was issued a traffic citation in 2001 for driving under the influence of alcohol, he was not charged with a crime. An individual may be issued a complaint in the form of a traffic citation whenever he is detained by a peace officer for violating any provision of NRS chapter 484 that is punishable as a misdemeanor.⁴ There is no merit whatsoever to Hunter's claim that he was never convicted of driving under the influence in 2001 because the complaint was issued in the form of a

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.

⁴NRS 484.799(1).

traffic citation.⁵ The district court examined Hunter's 2001 judgment of conviction and concluded that it "appears valid in all respects." Therefore, Hunter did not establish that his trial counsel was ineffective for failing to challenge the use of his 2001 conviction, and we affirm the order of the district court with respect to this claim.

Hunter next contended that his guilty plea was not knowingly entered. A guilty plea is presumptively valid, and Hunter carries the burden of establishing that his plea was not entered knowingly and intelligently.⁶ In determining the validity of a guilty plea, this court looks to the totality of the circumstances.⁷ Further, this court will not reverse a

⁵Hunter further claimed that because "he was being issued a citation" and "not being charged with a crime," he was denied the right to a jury trial on his 2001 case. Hunter was not given a jury trial in his 2001 case, however, because it was his second offense within a seven-year period, and therefore punishable as a misdemeanor, rather than a felony. See NRS 484.3792(1)(b); Blanton v. North Las Vegas Mun. Ct., 103 Nev. 623, 748 P.2d 494 (1987), aff'd sub nom. Blanton v. City of North Las Vegas, Nev., 489 U.S. 538 (1989) (holding that individual charged with misdemeanor driving under the influence of alcohol is not entitled to a trial by jury).

⁶See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Hubbard v. State, 110 Nev. 671, 877 P.2d 519 (1994).

⁷State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000); Bryant, 102 Nev. 268, 721 P.2d 364.

district court's determination concerning the validity of a plea absent a clear abuse of discretion.⁸


Hunter claimed that his guilty plea was not knowingly or voluntarily entered because he was not informed that a prior conviction could be used to enhance his conviction to a felony.⁹ NRS 484.3792 provides that the first two driving under the influence of alcohol convictions within a seven-year period are misdemeanors; a third or subsequent offense is a felony, subject to a prison term of between one and six years. Here, Hunter had previous convictions in 1998 and 2001. During the plea canvass, the district court informed Hunter, "[i]f you've had two other cases within the last seven years driving under the influence, then I have to make this a felony and I have to send you to prison." After further discussion concerning Hunter's previous convictions, the district court stated, "[y]ou had a conviction in 1998, you had this conviction in 2001, those are within six years, the one in October, 1998, that's only five years ago." We conclude that Hunter failed to establish that under the totality of the circumstances, he was unaware that previous convictions could be used to enhance his conviction to a felony. As such, the district court did not err in denying this claim.


⁸Hubbard, 110 Nev. at 675, 877 P.2d at 521.

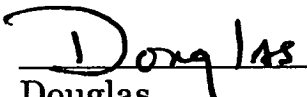
⁹Hunter specifically argued that he was not informed that a prior "traffic citation" could be used to enhance his offense to a felony. As discussed earlier, a previous judgment of conviction—not the issuance of a traffic citation—was the basis for the enhancement.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Hunter is not entitled to relief and that briefing and oral argument are unwarranted.¹⁰ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹¹


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. John P. Davis, District Judge
James Quenton Hunter
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk

¹⁰See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹¹We have reviewed all documents that Hunter 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 Hunter has attempted to present claims or facts in those submissions that were not previously presented in the proceedings below, we have declined to consider them in the first instance.