

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE LAMAR HARTWELL A/K/A
WILLIE HARTWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49154

FILED

SEP 18 2007

JANE TE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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; Elizabeth Halverson, Judge.

Appellant Willie Lamar Hartwell was convicted, pursuant to a guilty plea, of three counts of burglary while in possession of a firearm, three counts of robbery with the use of deadly weapon, and one count of conspiracy to commit robbery. Hartwell was sentenced under the large habitual criminal statute to serve six concurrent and one consecutive term of 10 to 25 years in prison.¹ No direct appeal was filed.

Hartwell timely filed a post-conviction petition for a writ of habeas corpus in the district court. After conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

Hartwell argues that the district court erred in finding that his counsel did not deprive him of his direct appeal. We disagree. The record does not indicate that Hartwell ever asked his counsel to file a

¹See NRS 207.010(1)(b).

direct appeal.² Hartwell's expression of disappointment that two of his sentences were consecutive rather than concurrent does not constitute such a request. Hartwell's plea agreement, which he acknowledged reading and signing, advised him of his limited rights to appeal after a guilty plea. Further, counsel testified at the evidentiary hearing that he did not see any appealable issues in the case. We therefore conclude that the district court did not err in denying this claim.

Hartwell also argues that the district court erred in finding that he properly stipulated to the prior convictions giving rise to his treatment as a habitual criminal. We disagree. In Hodges v. State, we held that a defendant could receive habitual criminal treatment based on a stipulation to or waiver of proof of prior convictions, but not based on a stipulation merely to his status as a habitual offender.³ As in Hodges, it is clear in this case that Hartwell stipulated to or waived proof of his prior convictions, not that he only stipulated to his status as a habitual offender.⁴ Although the convictions were not listed in the plea agreement or in the attached amended information, the plea agreement stipulated to treatment as a habitual criminal and set forth the possible sentences. Before Hartwell entered his guilty plea, the parties set forth on the record the extensive history of the plea negotiations, including the State's

²See Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994) ("We have ruled that an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.").

³119 Nev. 479, 484, 78 P.3d 67, 70 (2003).

⁴See id. at 484-85, 78 P.3d at 70.


requirement that Hartwell stipulate to habitual criminal treatment "based on his seven prior felonies." Before accepting Hartwell's guilty plea, the parties advised the district court in Hartwell's presence that the negotiation included large habitual criminal treatment. While canvassing Hartwell, the district court established that Hartwell understood the range of punishments he was facing. Before sentencing, Hartwell was served with the State's notice of intent to seek punishment as a habitual criminal, which listed six prior felonies. At sentencing, the district court noted that Hartwell disputed one of those six felonies, but there is no indication in the record that Hartwell disputed the remaining convictions. On the basis of these facts, we conclude that the district court did not err in finding that Hartwell stipulated to these five prior convictions.

Having reviewed Hartwell's contentions and concluded they lack merit, we


ORDER the judgment of the district court AFFIRMED.


_____, C. J.

Maupin


_____, J.

Gibbons


_____, J.

Cherry

cc: Hon. Elizabeth Halverson, District Judge
Karen A. Connolly, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk