

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES VANCE WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52738

**FILED**

APR 07 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Inopri*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant James Vance Williams' post-conviction petitions for writs of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Williams filed two post-conviction petitions for writs of habeas corpus in the district court. Appointed counsel assisted Williams with the first petition and filed a notice withdrawing the petition. The district court dismissed the second petition after concluding that it was successive because it raised claims that were "virtually identical" to those raised in the first petition. In Williams v. State, Docket No. 49829 (Order of Reversal and Remand, January 15, 2008), we determined that the district court had not entered a written order granting withdrawal of the first petition and that the claims raised in the first petition were not decided on the merits. On remand, the district court reviewed and denied both petitions in a written order. On appeal, Williams appears to present the following issues for our review.

First, Williams contends that the district court erred by denying his claims that defense counsel was ineffective for (1) not

objecting to the State's characterization of him as a thief, (2) coercing him into pleading guilty to avoid habitual criminal adjudication, and (3) failing to question his competency to enter the guilty plea. When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that (1) counsel argued that Williams was not the actual thief and only pawned the stolen items; (2) counsel's assertions regarding the habitual criminal statute were accurate and she provided competent representation by explaining the potential risks of going to trial; and (3) there was no indication that Williams suffered from a mental illness that would impair his ability to understand the legal proceedings before him and, by his own admissions, Williams was not under the influence of drugs, alcohol, or medications at the time he entered his guilty plea. The district court further found that counsel's representation did not fall below a reasonable standard and did not prejudice Williams. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel). The district court's findings are supported by substantial evidence and are not clearly wrong, and Williams has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude that the district court did not err in denying Williams' ineffective-assistance claims.

Second, Williams contends that the district court erred by denying his claim that the district court abused its discretion at sentencing. Williams did not raise this claim on direct appeal and

therefore it is waived. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). The claim also falls outside of the narrow scope of claims that may be raised in a post-conviction petition challenging a judgment of conviction based on a guilty plea. NRS 34.810(1(a).

Third, Williams contends that the district court abused its discretion by failing to appoint counsel to assist him with his habeas petitions. NRS 34.750(1) provides for the discretionary appointment of post-conviction counsel. We note that the district court appointed counsel to assist Williams with his first habeas petition, the issues raised in Williams' second petition are virtually identical to the issues raised in Williams' first petition, and the issues were not especially complex. Further, nothing in the record suggests that Williams was unable to comprehend the habeas proceedings or that counsel was necessary to help prove the claims. Given these circumstances, we conclude that Williams has not demonstrated that the district court abused its discretion by not appointing post-conviction counsel to assist with his second petition.

Fourth, Williams contends that the district court abused its discretion by failing to conduct an evidentiary hearing to determine whether (1) he wanted to withdraw his first habeas petition, (2) counsel was ineffective, and (3) the district court abused its discretion at sentencing. "This court has long recognized a petitioner's right to a post-conviction evidentiary hearing when petitioner asserts claims supported by specific factual allegations not belied by the record that, if true, would entitle him to relief." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). "A claim is 'belied' when it is contradicted or proven to be

false by the record as it existed at the time the claim was made.” Id. Here, (1) Williams has not shown that the issue of whether he wanted to withdraw his first petition is relevant, (2) the ineffective-assistance claims are belied by the record, and (3) Williams waived his sentencing claim by failing to raise it on direct appeal. Accordingly, Williams has not demonstrated that he was entitled to an evidentiary hearing.

Having considered Williams’ contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Robert H. Perry, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk