

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD STEVEN BEVERLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38267

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

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

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

On January 13, 2000, the district court convicted appellant, pursuant to a jury verdict, of one count of conspiracy to commit burglary, two counts of burglary, one count of attempted burglary, and one count of possession of burglary tools.¹ The district court adjudicated appellant a habitual criminal and sentenced appellant to three consecutive terms of 60 to 190 months each in the Nevada State Prison and two concurrent terms of one year each in the Clark County Detention Center. This court dismissed appellant's direct appeal.²

On April 9, 2001, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to

¹On July 18, 2001, the district court entered an amended judgment of conviction adding a reference to the habitual criminal statute.

²Beverly v. State, Docket No. 35526 (Order Dismissing Appeal, September 21, 2000).

conduct an evidentiary hearing. On July 5, 2001, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that his trial counsel rendered ineffective assistance by failing to "disclose all pertinent information" to appellant regarding the State's offer of a plea bargain so that appellant could "make a decision based on all the facts."

Our review of the record on appeal reveals that the district court did not err in rejecting appellant's claim and in concluding that trial counsel's performance was not deficient. Appellant failed to specify what pertinent information his counsel failed to disclose. Further, the record indicates that the State informed appellant in open court of its offer of a plea bargain, and that appellant chose to proceed to trial. Thus, appellant failed to demonstrate that his trial counsel was ineffective in this regard.³

Next, appellant contended that his appellate counsel rendered ineffective assistance by failing to challenge whether the State met its burden of proving each element of one of the burglary charges, the conspiracy charge, and the possession of burglary tools charge.

Our review of the record on appeal reveals that the district court did not err in rejecting appellant's claim and in concluding that appellate counsel's performance was not deficient. First, appellate counsel did challenge the sufficiency of the evidence regarding one of the burglary convictions, and the doctrine of the law of the case prevents further litigation.⁴ Moreover, appellant failed to specify how the State allegedly failed to meet its burden of proving each element of the conspiracy charge, one of the burglary charges, and the possession of burglary tools charge.

³See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); Strickland v. Washington, 466 U.S. 668 (1984).

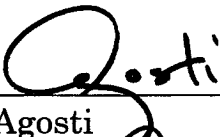
⁴See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

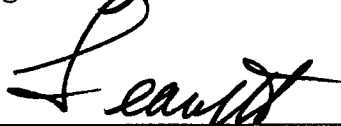
The record indicates that there was sufficient evidence to support appellant's conviction on these charges. At trial, appellant's co-conspirator testified that he, appellant, and another co-conspirator had planned to steal a stove from a house that was under construction, and said that after searching through one house, he had observed appellant in the back yard of a neighboring house. Additionally, Detective Ralph Ray testified that he had observed appellant handing a bolt cutter to his co-conspirator immediately before he observed appellant exiting another house. Further, an audio-taped confession by appellant that he had entered yet another home with a stove in it was played at trial. Thus, appellant did not establish that his appellate counsel was ineffective because appellant failed to demonstrate that a challenge to his conviction on any of these charges would have had a reasonable probability of success on appeal.⁵

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁵See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

⁶See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jack Lehman, District Judge
Attorney General/Carson City
Clark County District Attorney
Lloyd Steven Beverly
Clark County Clerk