

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER JENKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42915

FILED

OCT 07 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Roger Jenkins' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On March 6, 1998, Jenkins was convicted, pursuant to a jury verdict, of one count each of robbery with the use of a deadly weapon (count I) and grand larceny auto (count II). The district court sentenced Jenkins to serve two consecutive prison terms of 26-120 months for count I and a concurrent prison term of 16-72 months for count II, and ordered him to pay \$9,596.63 in restitution jointly and severally with his codefendant. This court dismissed Jenkins' untimely direct appeal based on a lack of jurisdiction.¹

On April 16, 1999, with the assistance of counsel, Jenkins filed a post-conviction petition for a writ of habeas corpus in the district court.²

¹Jenkins v. State, Docket No. 32918 (Order Dismissing Appeal, September 10, 1998).

²The district court granted Jenkins permission to file his petition beyond the one-year deadline imposed by NRS 34.726, and thus, evidently found that Jenkins had demonstrated good cause for the extension.

The State opposed the petition and Jenkins filed a reply. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing, and on November 4, 1999, entered an order denying Jenkins' petition. Jenkins filed a timely proper person appeal. On appeal, this court reversed the district court's order in its entirety and remanded for an evidentiary hearing, concluding that, inter alia, "the district court may have erroneously denied Jenkins' petition without conducting an evidentiary hearing,"³ and Jenkins may have been improperly deprived of a direct appeal despite expressing such an interest.⁴

On October 7, 2002, the district court conducted a hearing on remand from this court and ultimately determined that Jenkins was denied the right to a direct appeal based on the ineffective assistance of counsel. The district court found that Jenkins was entitled to the Lozada remedy and therefore could raise all the issues in a habeas petition that he would have raised on direct appeal.⁵ The district court appointed counsel to represent Jenkins, and on March 7, 2003, counsel filed a supplement to Jenkins' original petition of April 16, 1999. The State opposed the

³See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (holding that when a post-conviction habeas petition raises claims supported by specific factual allegations, which, if true, entitles the petitioner to relief, the petitioner is entitled to an evidentiary hearing unless the record on appeal belies those claims).

⁴Jenkins v. State, Docket No. 35173 (Order of Reversal and Remand, July 26, 2002). See Thomas v. State, 115 Nev. 148, 151, 979 P.2d 222, 224 (1999) (holding that where an appellant "expressed a desire to appeal . . . appellant's counsel had a duty . . . to perfect an appeal on appellant's behalf").

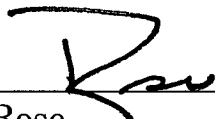
⁵Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994); see also Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).

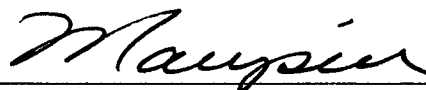
petition. The district court conducted an evidentiary hearing, and on February 18, 2004, entered an order denying Jenkins' petition. This timely appeal followed.

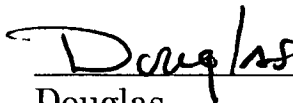
In the petition, Jenkins presented claims of ineffective assistance of counsel. The district court found that counsel was either not ineffective or that Jenkins was not prejudiced by the allegedly deficient conduct of counsel. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁶ Jenkins has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Jenkins has not demonstrated that the district court erred as a matter of law.

Accordingly, having considered Jenkins' contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁶See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk