IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO GOMEZ,
Appellant,
vs.
WARDEN, LOVELOCK CORRECTIONAL CENTER, CRAIG FARWELL,
Respondent.

No. 42932

FILED

SEP 15 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Antonio Gomez' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On June 2, 2003, Gomez was convicted, pursuant to a guilty plea, of one count each of attempted sexual assault and battery with the intent to commit a sexual assault. The district court sentenced Gomez to serve two consecutive prison terms of 60-240 months and 36-96 months. Gomez did not pursue a direct appeal from the judgment of conviction and sentence.

On November 3, 2003, Gomez filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent Gomez or conduct an evidentiary hearing. The State opposed the petition, and Gomez filed a proper person reply to the State's opposition. On February 3, 2004, the district court entered an order denying Gomez' petition. With the assistance of retained counsel, this timely appeal followed.

First, Gomez contends that the district court abused its discretion at sentencing. More specifically, Gomez argues that the district court judge "completely abandoned her impartial judicial role . . . . [M]ade numerous inappropriate remarks . . . indicative of improper bias or prejudice, . . . closed her mind to the presentation of evidence," and relied upon impalpable and/or highly suspect evidence in denying him probation and imposing an excessive sentence.[1] This court has stated repeatedly, however, that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings."[2] Accordingly, we conclude that Gomez waived his right to challenge the district court's sentencing discretion by failing to pursue the matter in a direct appeal.

Second, Gomez contends that he received ineffective assistance of counsel at sentencing. Gomez argues that counsel was ineffective for failing to argue for concurrent prison terms because "the very real possibility . . . exists that the court would have ordered lesser sentences or that the sentences run concurrently had counsel properly requested such." We disagree with Gomez' contention.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell below an objective standard of reasonableness, and that, but for counsel's alleged errors, there is a reasonable probability

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[1]See NRS 176.139; NRS 176A.110(1)(a).

[2]See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

that the results of the proceedings would have been different.[3] In the instant case, the district court found that counsel was not ineffective. The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.[4] Gomez has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Gomez has not demonstrated that the district court erred as a matter of law.

Therefore, having considered Gomez' contentions and concluded that they are either not properly raised or without merit, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Sally L. Loehrer, District Judge
Kajioka & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[3]See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

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