

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL GENE JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43926

FILED

OCT 05 2005

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's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; David A. Huff, Judge.

Appellant was originally convicted, pursuant to a guilty plea, of two counts of uttering a forged instrument and one count of being a principal to the uttering of a forged instrument. On direct appeal, appellant did not challenge the validity of his conviction. Rather, his sole contention was that the district court erred in awarding credit for presentence confinement. This court agreed and remanded the matter to the district court to correct the amount of credit allowed for presentence confinement.¹

Appellant subsequently filed a proper person petition for a writ of habeas corpus, alleging that counsel was ineffective for failing to investigate the case against appellant prior to the entry of appellant's guilty plea, and that counsel was ineffective for failing to raise various issues on direct appeal. All of the direct appeal issues identified by

¹Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004).

appellant relate to matters that occurred prior to the entry of appellant's guilty plea.

Following the appointment of counsel and an evidentiary hearing, the district court denied the petition. Specifically, the district court found that trial counsel had adequately investigated the fact that at the time of the crime for which appellant was convicted, appellant had a bank account at Wells Fargo, but that the number of appellant's account was not the same as the number that appeared on the check cashed by appellant. The district court further found that all of the direct appeal issues identified by appellant in his petition had been waived by his guilty plea. Accordingly, the district court concluded that appellate counsel was not ineffective for failing to raise those claims on direct appeal.²

In the instant appeal, appellant argues that he should have been allowed an evidentiary hearing and that the district court erred by concluding that appellant made insufficient factual allegations to support the writ. As previously noted, however, the district court did, in fact, conduct an evidentiary hearing. Further, the district court's denial of the petition was not based on a lack of specificity in the allegations.³ We therefore conclude that appellant's argument is without merit.

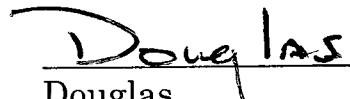
Moreover, the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when

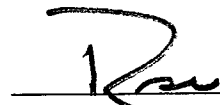
²See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (noting that such claims are not properly presented on direct appeal and quoting Tollett v. Henderson, 411 U.S. 258 (1973)).

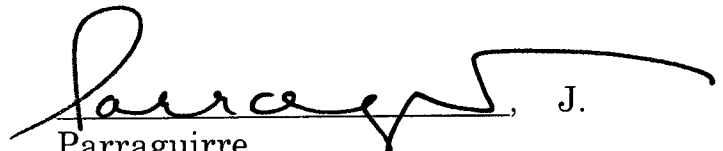
³Cf. Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984) (holding that a petitioner is not entitled to an evidentiary hearing unless he makes specific factual allegations which, if true, would entitle him to relief).

reviewed on appeal.⁴ In this case, appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Robert J. Fry
Rick Lawton
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk

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