

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ALEX A/K/A CHARLES
EDWARD ALEX, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44404

FILED

APR 06 2005

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

ORDER OF AFFIRMANCE

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. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On June 10, 2002, the district court convicted appellant, pursuant to a guilty plea, of two counts of larceny from the person and one count of larceny from the person of a victim over the age of sixty-five. The district court sentenced appellant to serve four consecutive terms of nineteen to forty-eight months in the Nevada State Prison. Appellant did not file a direct appeal.

On May 19, 2003, 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 conduct an evidentiary hearing. On August 21, 2003, the district court denied appellant's petition. On appeal from that order, this court affirmed

the district court's decision in part, reversed in part and remanded to the district court for the purpose of conducting an evidentiary hearing on the sole issue of whether appellant's trial counsel failed to file a notice of appeal after appellant requested that he do so.¹

On December 8, 2004, the district court conducted an evidentiary hearing on appellant's claim that his counsel failed to file an appeal on his behalf. On December 23, 2004, the district court denied appellant's petition finding that appellant was not denied his right to a direct appeal. This appeal followed.

In his petition, appellant contended that his counsel was ineffective for failing to file a notice of appeal after being requested to do so. Based upon our review of the record, we conclude that appellant failed to demonstrate that his trial counsel was ineffective.

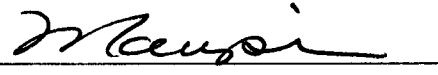
At the evidentiary hearing, trial counsel testified that he did not recall appellant requesting him to file a notice of appeal on his behalf. Additionally, trial counsel testified that, had appellant requested an appeal, he would have forwarded appellant's file to the public defender's office for handling of the appeal. Trial counsel also testified that he discussed the fact with appellant that there were no non-frivolous issues appropriate for a direct appeal. Appellant testified at the evidentiary hearing that he did not have any jurisdictional or constitutional issues he

¹Alex v. State, Docket No. 41977 (Order Affirming in Part, Reversing in Part and Remanding, August 23, 2004).

wished to appeal. The district court specifically found that trial counsel's testimony was more credible than appellant's testimony and appellant was not denied his right to a direct appeal. Our review of the record on appeal reveals that the district court's finding is supported by substantial evidence and is not clearly wrong.² Therefore, we affirm the district court's denial of this claim.

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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

³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Joseph T. Bonaventure, District Judge
Charles Alex
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk