

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD A. TUNSTALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44474

FILED

MAY 03 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Todd Tunstall's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On March 14, 2003, the district court convicted Tunstall, pursuant to a guilty plea, of two counts of attempted lewdness with a child under the age of fourteen.¹ The district court sentenced Tunstall to serve two consecutive terms of 24 to 240 months in the Nevada State Prison. Tunstall did not file a direct appeal.

On August 5, 2003, Tunstall 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 Tunstall or to conduct an evidentiary hearing. On November 3, 2003, the district court denied Tunstall's petition. On appeal, this court affirmed the order of the district court in part, reversed in part, and remanded the matter for an evidentiary hearing on the sole issue of whether Tunstall's counsel was

¹On July 16, 2003, the district court entered an amended judgment of conviction to reflect additional credit for time served.

ineffective for failing to file a direct appeal, despite Tunstall's alleged request to do so.²

On December 2, 2004, the district court conducted an evidentiary hearing during which Tunstall's counsel, Ross Goodman, provided testimony. Goodman stated that Tunstall did not ask him to file an appeal. Tunstall provided no evidence to the contrary. The district court subsequently denied Tunstall relief on his claim. This appeal followed.

We conclude that the district court's determination that Tunstall's appeal deprivation claim lacked merit was supported by substantial evidence and was not clearly wrong.³ Tunstall provided no support for his contention that Goodman refused to file a direct appeal. We therefore affirm the order of the district court in this regard.

Tunstall additionally claimed in his petition that the district court erred in denying his presentence motion to withdraw his guilty plea. In his motion, Tunstall argued that his counsel coerced him into pleading guilty and that he did not understand the terms of the plea agreement. However, Tunstall should have raised the denial of his presentence motion to withdraw his guilty plea in a direct appeal from his judgment of conviction, and he did not demonstrate good cause for failing to do so.⁴

²Tunstall v. State, Docket No. 42356 (Order Affirming in Part, Reversing in Part, and Remanding, August 30, 2004). In light of our disposition, this court declined to consider Tunstall's claim that the district court erred in denying his presentence motion to withdraw his guilty plea.

³Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁴See 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). We note that an order denying a presentence motion to

continued on next page . . .

cc: Hon. Valorie Vega, District Judge
Todd A. Tunstall
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk