

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JOHNSON, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44503

**FILED**

MAY 19 2005

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant James Johnson, III's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On July 23, 2002, the district court convicted Johnson, pursuant to an Alford plea,<sup>1</sup> of two counts of attempted sexual assault of a minor under the age of fourteen. The district court sentenced Johnson to serve two concurrent terms of 96 to 240 months in the Nevada State Prison. Johnson did not file a direct appeal.

On July 15, 2003, Johnson 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 Johnson or to conduct an evidentiary hearing. On October 21, 2003, the district court denied Johnson'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 Johnson's trial counsel

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<sup>1</sup>See North Carolina v. Alford, 400 U.S. 25 (1970).

was ineffective for failing to file a direct appeal, despite Johnson's alleged request to do so.<sup>2</sup>

The district court conducted an evidentiary on December 13, 2004. During the hearing, Johnson's trial counsel, Craig Mueller, testified that he did not recall Johnson requesting a direct appeal. Although Johnson testified that he requested a direct appeal at the conclusion of his sentencing hearing, the district court found Mueller to be the more credible witness and denied Johnson relief. This appeal followed.

We conclude that the district court's determination that Johnson's appeal deprivation claim lacked merit was supported by substantial evidence and was not clearly wrong.<sup>3</sup> Consequently, we affirm the district court's denial of this claim.

In his petition, Johnson additionally argued that: his due process rights were violated when he was denied the right to respond to the State's opposition to his motion to withdraw his guilty plea; his sentence violated the prohibition against cruel and unusual punishment; and three defense witnesses were prevented from testifying at his sentencing hearing. However, these claims are outside the scope of a post-

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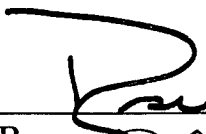
<sup>2</sup>Johnson v. State, Docket No. 42181 (Order Affirming in Part, Reversing in Part and Remanding, September 28, 2004). In light of our disposition, this court declined to address Johnson's claims that: he was deprived of the right to respond to the State's opposition to his earlier motion to withdraw his guilty plea; his sentence constituted cruel and unusual punishment; and three defense witnesses were prevented from testifying at his sentencing hearing. This court ordered the district court to resolve these claims in its order addressing Johnson's appeal deprivation claim.


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

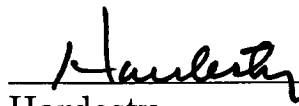
conviction petition for a writ of habeas corpus when the conviction is the result of a guilty plea.<sup>4</sup> Therefore, the district court did not err in denying these claims.<sup>5</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Johnson is not entitled to relief and that briefing and oral argument are unwarranted.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

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<sup>4</sup>See NRS 34.810(1)(a) (providing that the court shall dismiss a petition for a writ of habeas corpus if the conviction was the result of a guilty plea and the petition is not based on an allegation that the plea was involuntarily or unknowingly entered, or that the plea was entered without the effective assistance of counsel).

<sup>5</sup>Although the district court unnecessarily addressed the merits of these claims, the court reached the correct result in denying Johnson relief.

<sup>6</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. John S. McGroarty, District Judge  
James Johnson III  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk