

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT B. GRUD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45100

FILED

JUN 12 2006

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. R. [Signature]
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. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Scott Grud pleaded guilty pursuant to Alford,¹ to one count of felony domestic battery. Prior to the imposition of sentence, Grud requested the district court allow him to withdraw his plea. The district court denied the request. Grud's counsel indicated he would file an appeal, but did not. Grud filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court held an evidentiary hearing and after hearing argument, the district court denied the petition.

In its findings of fact, the district court found that Grud's counsel failed to file a direct appeal despite his promises otherwise. Additionally, the district court found that Grud was informed that he was entering a plea to a crime for which probation was an available sentencing

¹See North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

option, which in fact, it was not.² Under these circumstances, we conclude that Grud must be allowed to withdraw his plea.

"[A] defendant must be aware that his offense is nonprobational prior to entering his guilty plea because it is a direct consequence arising from the plea."³

Because we have determined that Grud should be allowed to withdraw his plea, we need not consider Grud's claim that he was deprived of his direct appeal. For the benefit of the district court, however, we note that if the district court finds that an individual was deprived of his direct appeal, the district court is then obligated to allow the presentation of any issues that could have been raised on direct appeal.⁴

In this case, the district court found that Grud was deprived of a direct appeal, but found that Grud had not been prejudiced, and that counsel was therefore, not ineffective. The district court is reminded that "[p]rejudice is presumed for purposes of establishing ineffective assistance of counsel when counsel's conduct completely denies a convicted defendant an appeal."⁵

Based on the foregoing, we

²See NRS 200.485(7).

³Little v. Warden, 117 Nev. 845, 847, 34 P.3d 540, 541 (2001).

⁴Mann v. State, 118 Nev. 351, 46 P.3d 1228 (2002); Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

⁵Mann 118 Nev. at 353, 46 P.3d at 1229.

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.⁶

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Robert W. Lane, District Judge
Carl M. Joerger
Attorney General George Chanos/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk
Scott B. Grud

⁶Because appellant is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to appellant unfiled all proper person documents appellant has submitted to this court in this matter.