

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL GEORGE HALEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45236

FILED

AUG 24 2005

ORDER OF AFFIRMANCE

CLERK OF THE SUPREME COURT
BY *J. Richards*
CLERK

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; Donald M. Mosley, Judge.

On December 8, 2003, the district court convicted appellant, pursuant to a guilty plea, of voluntary manslaughter with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of four to ten years in the Nevada State Prison. Appellant did not file a direct appeal.

On December 8, 2004, 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 March 24, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the district court did not sentence him as was agreed to in the plea agreement. Appellant also claimed that the district court relied on erroneous information on the presentence investigation report (PSI) which affected the district court in

its sentencing decision. Appellant did not specify what information in the PSI was erroneous.

Our review of the record on appeal reveals that the district court did not err in denying appellant's petition. Appellant's claims fell outside the scope of claims permissible in a habeas corpus petition challenging a conviction based upon a guilty plea.¹ To the extent that appellant's petition may be construed as a motion to modify a sentence, we conclude that the district court did not err in denying relief. Appellant failed to demonstrate that the district court, in sentencing appellant, made a material mistake about his criminal record that worked to his extreme detriment.² To the extent that appellant's petition may be construed as a motion to correct an illegal sentence, we conclude that the district court did not err in denying relief. Appellant's claim fell outside the very narrow scope of claims permissible in a motion to correct an illegal sentence.³ Finally, as a separate and independent ground to deny relief, appellant failed to demonstrate that the plea agreement was breached. The State retained the right to argue at sentencing and appellant received a sentence within the statutory range.⁴

Next, appellant claimed that trial counsel was ineffective for failing to file a direct appeal, despite appellant's request for counsel to do so. When a defendant pleads guilty, counsel is obligated to inform a

¹See NRS 34.810(1)(a).

²See Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996).

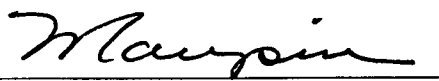
³See id. at 707-08, 918 P.2d at 324.

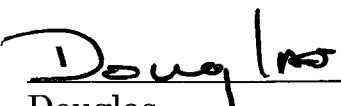
⁴NRS 200.080; NRS 193.165.

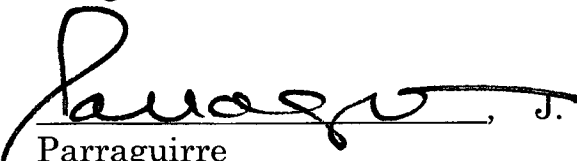
defendant about his or her appellate rights if the defendant expressly inquires about an appeal, or if an appellate argument exists that seems meritorious.⁵ Appellant did not allege or demonstrate with any degree of factual specificity that he asked counsel to file a direct appeal.⁶ Appellant failed to demonstrate that counsel was ineffective, and the district court did not err in denying 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.⁷ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁵Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).

⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁷See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Randall George Haley
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk