

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL MAURICE COBB,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46315

**FILED**

**JUL 10 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND

REMANDING

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 January 13, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of 32 to 96 months in the Nevada State Prison, suspended the sentence and placed appellant on probation for an indeterminate period not to exceed five years. Probation was revoked on December 8, 2004, and appellant was sentenced to serve a term of 24 to 72 months in the Nevada State Prison. No direct appeal was taken.

On August 22, 2005, 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 October 31, 2005, the district court denied appellant's petition. This appeal followed.

In his petition, appellant alleged that counsel was ineffective for failing to investigate, for coercing appellant's guilty plea, and for concealing proof of appellant's innocence. Appellant also claimed that his sentence of lifetime supervision was unconstitutional. We affirm the district court's denial of these claims as procedurally barred because they are untimely and appellant did not demonstrate good cause for his delay in filing.<sup>1</sup>

Next, appellant claimed that his attorney was ineffective for failing to file a direct appeal when he requested him to do so by letter. Our review of the record on appeal revealed that the district court may have erroneously denied appellant's petition without conducting an evidentiary hearing on this claim. Appellant's claim that he was deprived of a direct appeal due to ineffective assistance of counsel was not belied by the record on appeal and if true would entitle him to relief.<sup>2</sup> Prejudice is presumed where a defendant expresses a desire to appeal and counsel fails to file an appeal.<sup>3</sup>

Accordingly, on February 13, 2006, and April 20, 2006, we ordered the State to show cause why this appeal should not be remanded to the district court for an evidentiary hearing to determine whether or not counsel's performance fell below an objective standard of reasonableness.<sup>4</sup> The State did not oppose the remand of appellant's appeal deprivation claim to the district court for an evidentiary hearing.

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<sup>1</sup>See NRS 34.726(1).

<sup>2</sup>See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).

<sup>3</sup>Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003).

<sup>4</sup>See Strickland v. Washington, 466 U.S. 668 (1984).

Accordingly, we reverse the decision of the district court denying this claim and remand this matter to the district court to conduct an evidentiary hearing on the issue of whether appellant's counsel failed to file a notice of appeal after appellant expressed a desire to appeal.<sup>5</sup> Because appellant attached a copy of a purported letter that he sent to counsel, the district court must determine whether the letter was drafted and sent on the date affixed with the letter. If the court determines that counsel failed to file a notice of appeal after appellant expressed a desire to appeal, the district court shall appoint counsel to represent appellant and shall permit appellant to file a petition for a writ of habeas corpus raising any issues appellant could have raised on an appeal following his probation revocation.<sup>6</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is only entitled to the relief granted herein and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

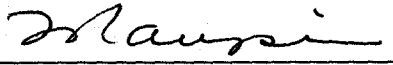
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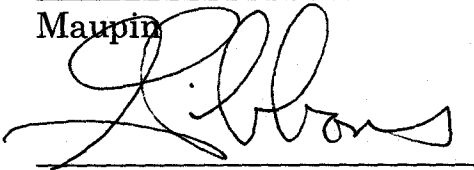
<sup>5</sup>Appellant claimed that his probation revocation was unconstitutionally based on his inability to pay restitution and use of polygraph results without counsel. In light of our disposition relating to the appeal deprivation claim, we decline to reach the merits of these claims. If the district court determines that appellant was deprived of a direct appeal without his consent, appellant's claim that his probation was unconstitutionally revoked may be raised by appointed counsel in the petition filed pursuant to Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994). If the district court determines that the appeal deprivation claim lacks merit, the district court shall resolve these claims in the final order denying appellant's petition.

<sup>6</sup>See Id. at 349, 871 P.2d 944.

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

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>8</sup>

  
\_\_\_\_\_, J.  
Maupin

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

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

cc: Hon. Joseph T. Bonaventure, District Judge  
Paul Maurice Cobb  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that appellant is entitled only to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.