

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LEWIS HERRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46830

FILED

JUL 25 2006

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

ORDER OF AFFIRMANCE

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.

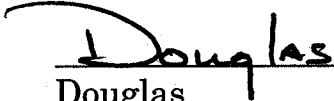
On July 2, 2000, the district court convicted appellant, pursuant to a guilty plea, of two counts of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve two consecutive terms of twenty-four to ninety-six months in the Nevada State Prison, suspended the sentence, and placed appellant on probation for a term of five years. No direct appeal was taken. Appellant's probation was revoked on May 12, 2004, and appellant was ordered to serve his original sentence, with credit in the amount of 320 days.


On October 18, 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 January 12, 2006, the district court denied appellant's petition. This appeal followed.


In his petition, appellant contended that the district court erred in denying his motion for a transcript of the May 6, 2004 probation revocation hearing at the State's expense. This claim was not cognizable in a post-conviction petition for a writ of habeas corpus when the conviction was based upon a guilty plea. Such a petition may only allege "that the plea was involuntarily or unknowingly entered or that the plea was entered without the effective assistance of counsel."¹ Accordingly, we conclude the district court did not err in denying the petition.²

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.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹NRS 34.810(1)(a).

²We note that the record on appeal contains a copy of the transcript of the May 6, 2004 probation revocation hearing, file-stamped May 9, 2006.

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge
Daniel Lewis Herrera
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk