IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY E. JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47003

FILED

SEP 0 6 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Roy E. Johnson's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

The district court convicted Johnson, pursuant to an Alford plea,[1] of one count of attempted promotion of a sexual performance by a minor and two counts of possession of a visual presentation depicting sexual conduct of a person under 16 years of age. The district court sentenced Johnson to serve a prison term of 36 to 96 months for attempting to promote a sexual performance by a minor and two concurrent terms of 12 to 36 months for possessing visual presentations depicting sexual conduct of a person under 16 years of age. The district court further ordered the sentences suspended and placed Johnson on probation for a period not to exceed three years. Johnson did not file a direct appeal.

After his probation was revoked, Johnson filed a timely proper person post-conviction petition for a writ of habeas corpus. The district

[1]See North Carolina v. Alford, 400 U.S. 25 (1970).

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court appointed counsel to represent Johnson, and counsel supplemented Johnson's petition. The district court held an evidentiary hearing and subsequently denied the petition. This appeal follows.

First, Johnson contends that the district court erred when it found that he entered his Alford plea freely and voluntarily and understood the nature of the offenses and the consequences of the plea. Johnson claims that he was unaware that he would be subject to lifetime supervision, he did not have sufficient time to review the written agreement and ask questions, he signed the agreement without consulting with his attorney, and his attorney was not the attorney who certified the agreement.

We conclude that the district court's finding was supported by substantial evidence and is not clearly wrong.[2] In the written agreement, Johnson acknowledged that he voluntarily entered the Alford plea, understood the consequences of the plea, and understood the rights and privileges he waived by entering the plea. Johnson further acknowledged that his attorney had answered all of his questions about the agreement and that he understood that he would receive a special sentence of lifetime supervision. During the district court's oral plea canvass, Johnson acknowledged that he had read, understood, and signed the agreement and that his Alford plea was made freely and voluntarily. And during the evidentiary hearing, Johnson's trial counsel testified that he went over everything in the original written agreement with Johnson, Johnson pointed out several negotiated terms that were missing from the agreement, and the missing terms were added to the agreement that was signed and executed in the district court.

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[2]See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Second, Johnson contends that the district court erred when it found that trial counsel had provided effective assistance. Johnson claims that he "felt compelled to plead guilty because his lawyer failed to discuss the case at length with him, rarely visited with him, failed to obtain necessary evidence from the district attorney, and was not ready to proceed to trial." Johnson further claims that his attorney did not advise him of his right to appeal.

Again we conclude that the district court's finding was supported by substantial evidence and is not clearly wrong. During the evidentiary hearing, Johnson's trial counsel testified that the jail log indicates that he visited Johnson five times in the jail, he discussed most of Johnson's case telephonically, and he spoke to Johnson over the telephone at least every other week during the first five months of 2003. Trial counsel indicated that he did not provide Johnson with a copy of his discovery due to the nature of the case and because he did not want anyone else in the jail to have access to it. Trial counsel further stated that he advised Johnson of his right to appeal. Moreover, the record before the district court revealed that Johnson was originally charged with 12 counts of promotion of a sexual performance by a minor and 10 counts of possession of a visual presentation depicting sexual conduct of a person under 16 years of age. As a result of trial counsel's negotiations, Johnson was able to plead guilty to one count of attempted promotion of a sexual performance by a minor and two counts of possession of a visual presentation depicting sexual conduct of a person under 16 years of age, after which he was released on his own recognizance, received a favorable sentence, the sentence was suspended, and he was placed on probation.

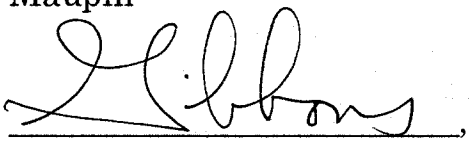
Finally, Johnson contends that the district court erred when it summarily denied his pretrial motion to dismiss appointed counsel and when it found that he had received conflict-free assistance of counsel

during his revocation hearing. We conclude that both of these contentions could have been raised on appeal and are therefore outside the scope of a post-conviction petition for a writ of habeas corpus.[3] Consequently, we decline to consider them here.

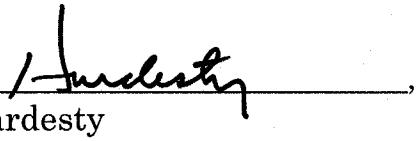
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that the district court did not err in denying Johnson's habeas petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, J.
Maupin



_____, J.
Gibbons



_____, J.
Hardesty

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[3]See NRS 34.810(1)(b)(2).

[4]Although we have elected to file Johnson's fast tract statement, we note that it does not comply with the form requirements of the Nevada Rules of Appellate Procedure. Specifically, the type used in the fast track statement exceeds 10 characters per inch. See NRAP 32(a). Counsel is cautioned that failure to comply with the form requirements in the future may result in the fast track statement being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions. NRAP 3C(n).

cc: Hon. Michael A. Cherry, District Judge
Karen A. Connolly
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk