

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER SALOMON REYES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47076

FILED

JUL 27 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. P. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of felony possession of a firearm by an ex-felon and misdemeanor possession of a controlled substance. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Javier Salomon Reyes to serve a prison term of 12 to 48 months for the possession of a firearm count and a jail term of 95 days, with credit for 95 days of time served, for the controlled substance count.

Reyes argues that defense counsel was ineffective for failing to file a motion to suppress the contents of his backpack. Additionally, Reyes argues that defense counsel was ineffective for failing to make an opening statement, cross-examine witnesses, and present a theory of defense. While acknowledging that this court will not generally review claims of ineffective assistance of counsel on direct appeal, Reyes argues that this court should consider his contentions in this appeal from the judgment of

conviction because defense counsel's ineffectiveness is apparent from the face of the record.¹ We disagree.

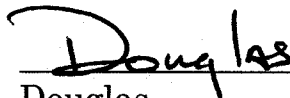
Claims of ineffective assistance of counsel "are generally more appropriately raised in the first instance in a post-conviction proceeding where the district court can conduct an evidentiary hearing to review and resolve factual uncertainties."² There has been no evidentiary hearing on Reyes's allegations of ineffective assistance of counsel, and Reyes has not demonstrated that a hearing to resolve issues of fact is unnecessary.³ Therefore, we decline to address Reyes's claims; they are more appropriately raised in a post-conviction proceeding in the district court in the first instance.


¹The State claims in its appellate brief that this court has previously ruled that the issues in this case are properly raised on direct appeal. We have made no such ruling. This court's prior order denying the State's motion to strike merely noted that there are exceptions to the general rule that claims of ineffective assistance of counsel may be raised on direct appeal. Our prior order, however, did not expressly state or conclude that those exceptions were applicable to Reyes's case. See Reyes v. State, Docket No. 47076 (Order Denying Motion to Strike, May 25, 2006).

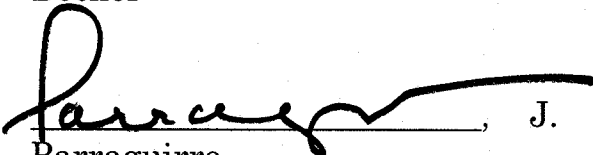
²Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

See Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994) (concluding that evidentiary hearing was not necessary where counsel's actions were a matter of record, not disputed, and per se improper).

Having considered Reyes's contentions and concluded that they are inappropriate for review on direct appeal, we
ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Goodman & Chesnoff
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk