

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY WHITE A/K/A NATHANIEL  
LEVALL TATUM,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47113

**FILED**

**NOV 09 2006**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying appellant Anthony White's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On November 24, 2004, the district court convicted White, pursuant to a guilty plea, of one count of robbery. The district court sentenced White to serve a prison term of 36 to 120 months. White did not file a direct appeal.

On November 22, 2005, White 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, the district court declined to appoint counsel to represent White. The district court conducted an evidentiary hearing. On March 10, 2006, the district court denied White's petition. This appeal follows.

In his petition, White made two bare claims of ineffective assistance of counsel. He also claimed that counsel did not advise him of his right to appeal and that he asked counsel to file an appeal on his behalf. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that

counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.<sup>1</sup> Whether a defendant received ineffective assistance of counsel is a mixed question of law and fact and is therefore subject to independent review.<sup>2</sup> However, the "purely factual findings of an inferior tribunal regarding a claim of ineffective assistance are entitled to deference on subsequent review of that tribunal's decision."<sup>3</sup>

During the evidentiary hearing, counsel testified that White did not ask him to file an appeal and that he was unaware of any nonfrivolous issues that White could have raised on direct appeal. The district court found that White did not ask counsel to file an appeal on his behalf,<sup>4</sup> he was not deprived of his right to a direct appeal,<sup>5</sup> his other claims of ineffective counsel were bare and unsubstantiated,<sup>6</sup> and counsel was not ineffective. We conclude that the district court's findings are supported by substantial evidence and are not clearly wrong.

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<sup>1</sup>Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)).

<sup>2</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

<sup>3</sup>Id.


<sup>4</sup>See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003) (holding that "counsel is ineffective if he or she fails to file a direct appeal after a defendant has requested or expressed a desire for a direct appeal").


<sup>5</sup>See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999) (holding "that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal").

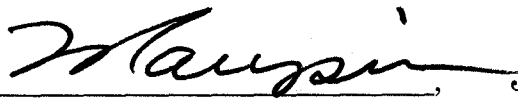
<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (providing that a petitioner must support his claims with specific allegations, which if true would entitle him to relief).

Having reviewed the record on appeal and for the reasons set forth above, we conclude that White is not entitled to relief and that briefing and oral argument are unwarranted.<sup>7</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

  
\_\_\_\_\_, C.J.  
Rose

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

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

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

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

<sup>8</sup>We have reviewed all documents that White has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted.