

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIUS CEASAR HIGGS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47428

**FILED**

**SEP 14 2006**

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Julius Ceasar Higgs's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The district court convicted Higgs, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced Higgs to serve a prison term of 48 to 180 months. We dismissed Higgs's untimely direct appeal.<sup>1</sup> Thereafter, Higgs filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, and counsel supplemented the petition. The State moved to dismiss the petition, and the district court granted the motion and denied the petition. This appeal follows.

Higgs claims that the district court erred in denying his petition without first conducting an evidentiary hearing. He contends that an evidentiary hearing would have revealed that trial counsel was ineffective for failing to advise him of his right to appeal and for failing to

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<sup>1</sup>Higgs v. State, Docket No. 45232 (Order Dismissing Appeal, June 13, 2005).

preserve the issues raised in his pretrial suppression motion for appeal. We disagree.

"A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief."<sup>2</sup> To support a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient and that prejudice ensued.<sup>3</sup> While "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal," counsel is obligated to inform a defendant of his right to appeal under certain circumstances.<sup>4</sup> "One such circumstance is when the defendant inquires about an appeal. Another circumstance is when the situation indicates that the defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success."<sup>5</sup>

We conclude that Higgs has not alleged that he inquired about an appeal nor has he demonstrated the existence of a direct appeal claim with a reasonable likelihood of success. The district court found that Higgs's claims "that his lawyer failed to inform him of his right to appeal and falsely informed him that another lawyer would perfect an appeal"

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<sup>2</sup>Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

<sup>3</sup>Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

<sup>4</sup>Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

<sup>5</sup>Id.

could not both be true and therefore Higgs had not alleged facts giving rise to a claim for relief. The district court further found that the record repelled Higgs's claim that the issues raised in his pretrial suppression motion were meritorious: Higgs was lawfully arrested, he was not subject to a Miranda violation, and the evidence obtained pursuant to the search warrant that was executed on his residence was not the fruit of his arrest or his statements. And the district court found that Higgs was afforded effective assistance of counsel. Our review of the record on appeal reveals that the district court's findings of fact are supported by substantial evidence and that Higgs has not demonstrated that the district court was clearly wrong.<sup>6</sup>

We further note that the entry of a guilty plea waives the right to appeal from events which preceded that plea,<sup>7</sup> unless the defendant has reserved the right in writing and with the consent of the district court and the district attorney.<sup>8</sup> Higgs entered his guilty plea before his pretrial suppression motion was decided, he did not reserve the right to appeal from an adverse determination of the pretrial motion, and he has not demonstrated that the district court and the district attorney would have consented to such a reservation.

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<sup>6</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (the district court's factual findings are entitled to deference when reviewed on appeal).

<sup>7</sup>See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975).

<sup>8</sup>NRS 174.035(3).

For the reasons set forth above, we conclude that the district court did not err in denying Higgs's petition without first conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker \_\_\_\_\_, J.  
Becker

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

Parraguirre \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge  
Mary Lou Wilson  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk