

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD JOHN ZIMBELMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48102

FILED

JAN 09 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Edward John Zimbelman's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Zimbelman was convicted, pursuant to a guilty plea, of one count each of attempted lewdness with a child under the age of 14 years and possession of visual presentation depicting sexual conduct of a person under the age of 16 years. The district court sentenced Zimbelman to serve concurrent prison terms of 60-150 months and 24-72 months.¹ Zimbelman did not pursue a direct appeal from the judgment of conviction and sentence.

On January 18, 2006, Zimbelman filed a timely proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Zimbelman,

¹According to the district court order denying Zimbelman's habeas petition, he was initially charged by criminal complaint with thirty-five counts of attempted lewdness with a minor and two counts of use of a minor in the production of pornography.

conducted an evidentiary hearing, and on September 14, 2006, entered an order denying Zimbelman's petition. This timely appeal followed.

Zimbelman contends that the district court erred in determining that he did not receive ineffective assistance of counsel resulting in the denial of his right to a direct appeal. Specifically, Zimbelman claims that his trial counsel, James Leavitt, "knew that an appeal was desired" and "effectively ignored any request for an appeal."² We disagree.

At the evidentiary hearing on Zimbelman's petition, Leavitt testified that after sentencing, he advised Zimbelman of his appellate rights, his fee structure, and that if he wished to appeal, he needed to do so within 30 days. Leavitt spoke several times with Zimbelman's brother and a family friend and discussed the appellate process and his fees. Leavitt did not believe that there were any non-frivolous issues to raise on appeal. Leavitt testified that Zimbelman never asked him to pursue an appeal and he never received payment from anyone to pursue an appeal. Zimbelman testified that after his sentencing hearing, he attempted several times to reach Leavitt by telephone but was always unsuccessful. Zimbelman conceded that he never informed Leavitt's secretary that he wished to appeal, wrote to Leavitt, or otherwise asked Leavitt to file a notice of appeal.

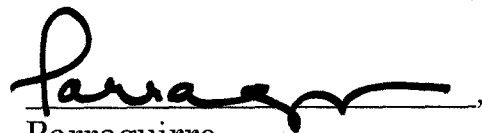
The district court found that counsel was not ineffective and that Zimbelman was not improperly deprived of his right to a direct appeal. The district court's factual findings are entitled to deference when

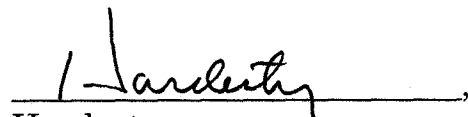
²See Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003).


reviewed on appeal.³ We conclude that Zimbelman has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Zimbelman has not demonstrated that the district court erred as a matter of law.

Therefore, having considered Zimbelman's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.⁴

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Michelle Leavitt, District Judge
Michael P. Villani & Associates
Edward John Zimbelman
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁴Because Zimbelman is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Zimbelman has submitted to this court in this matter.