

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY LEE WILLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48323

FILED

MAY 31 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 a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Appellant Randy Willis was convicted, pursuant to a guilty plea, of lewdness with a child under the age of fourteen years.¹ The district court sentenced him to life in prison with the possibility of parole after ten years. No direct appeal was taken. Willis filed a timely postconviction petition for a writ of habeas corpus, which the district court denied without conducting an evidentiary hearing. On appeal, this court affirmed in part, reversed in part, and remanded the matter to the district court, concluding that Willis was entitled to an evidentiary hearing on two of his claims—whether he was deprived of a direct appeal and whether his taking the antidepressant Elavil rendered his guilty plea unknowing and

¹See NRS 201.230.

involuntary.² After conducting an evidentiary hearing on these matters, the district court denied Willis's habeas petition. This appeal followed.

Willis argues that the district court erred in denying his claim that counsel denied him the opportunity to file a direct appeal. There is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue an appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.³ Here, counsel testified at the evidentiary hearing that he advised Willis that he did not believe grounds existed for an appeal but that if Willis wanted to appeal to contact him. Counsel stated that he did not hear from Willis until one year later when he received a letter from Willis. Willis testified that he was unaware of his right to appeal and that counsel responded to his letter by advising him that it was too late to appeal his conviction and sentence.

The district court considered counsel's testimony credible,⁴ finding that Willis had been advised of his right to appeal and had not requested counsel to pursue an appeal on his behalf. Based on these findings, the district court concluded that Willis had not been deprived of a direct appeal. A district court's factual findings are entitled to deference

²Willis v. State, Docket No. 44582 (Order Affirming in Part, Reversing in Part, and Remanding, February 16, 2006).

³Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

⁴See Little v. Warden 117 Nev. 845, 854, 34 P.3d 540, 546 (2001) (stating that the district court's adjudging the credibility of witnesses at an evidentiary hearing is entitled to deference on appeal).

when supported by substantial evidence and not clearly wrong.⁵ Here, the district court's findings in this regard are supported by substantial evidence and are not clearly wrong. Therefore, we conclude that the district court did not err in denying this claim.

Willis next contends that the district court erred in denying his claim that his guilty plea was unknowing and involuntary because he was under the influence of Elavil when he entered his plea. At the evidentiary hearing, counsel testified to the following: that he noticed that Willis appeared depressed but not suicidal; that Willis never informed counsel that he was taking Elavil; that he had no reason to suspect that Willis was not operating on a cognitive level; that he arranged for drug and psychosexual evaluations for Willis and that those evaluations did not reveal any signs of incompetence; that Willis understood the proceedings and communicated effectively; and that Willis was oriented as to time and place. Willis testified that the Elavil made him drowsy, that he "didn't really understand everything that was going on," and that on the day he entered his guilty plea he "felt kinda out of it." He also stated that on the day he entered his plea he understood counsel's advice and that he understood the plea canvass "somewhat."

The district court found counsel's testimony credible and accepted it,⁶ concluding that Willis failed to demonstrate that his guilty plea was invalid. The district court also noted that nothing about Willis's demeanor during the plea canvass indicated that he did not enter his plea


⁵See Barnhart v. State, 122 Nev. 301, 304, 130 P.3d 650, 652 (2006).

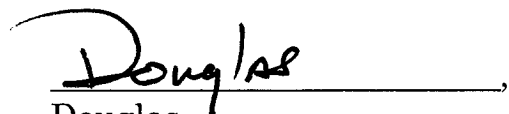
⁶See Little, 117 Nev. at 854, 34 P.3d at 546.

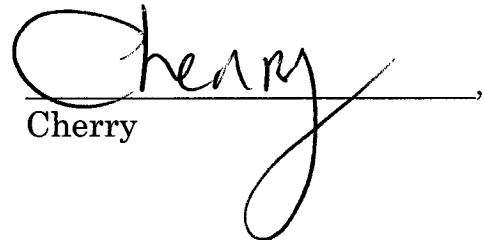
voluntarily, knowingly, or intelligently. The district court's findings on this matter are supported by substantial evidence and are not clearly wrong.⁷ Therefore, we conclude that the district court did not err in denying this claim.

Having considered Willis's arguments and concluded that the district court did not err in denying his habeas petition, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Cherry, J.

cc: Hon. Steven P. Elliott, District Judge
Karla K. Butko
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷See Barnhart, 122 Nev. at 304, 130 P.3d at 652.