

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRAY ANTHONY GORDON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48440

FILED

FEB 07 2007

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from an order of the district court dismissing appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

On May 31, 2005, the district court convicted appellant Andray Anthony Gordon, pursuant to a guilty plea, of one count of attempted murder with the use of a firearm. The district court sentenced Gordon to serve a prison term of 72 to 240 months with an equal and consecutive term for the use of a weapon. No direct appeal was taken.

On February 9, 2006, Gordon filed a post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent appellant, and counsel filed a supplement to the petition on May 8, 2006. On October 19, 2006, the district court entered an order dismissing the petition without conducting an evidentiary hearing.


In his petition below, Gordon asserted various claims of ineffective assistance of counsel. Gordon further raised a claim regarding the adequacy of the Lozada¹ remedy. As to Gordon's argument that the

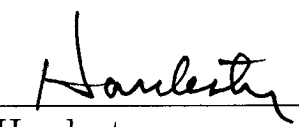
¹Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

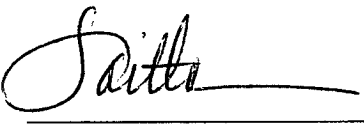
Lozada remedy is inadequate, we conclude that the district court did not err by dismissing this claim. In 1994, when the Lozada remedy was implemented, this court expressly concluded that it was a "proper" vehicle to remedy a petitioner's loss of his appellate rights. While not identical to the remedy of a belated direct appeal, we conclude that the Lozada remedy is the functional equivalent of a belated direct appeal and is an adequate remedy for a petitioner's loss of his appellate rights. The district court's order is therefore affirmed as to this claim.

As to the claims of ineffective assistance of counsel, the State has filed a confession of error in this court, conceding that those claims are not repelled by the record and that the matter should be remanded for an evidentiary hearing on those claims. We agree. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.²


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

²This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

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