

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL MAURICE COBB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48478

FILED

AUG 07 2007

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On January 13, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault. The district court sentenced appellant to serve a term of 32 to 96 months in prison, suspended the sentence and placed appellant on probation for an indeterminate period not to exceed five years. Probation was revoked on December 8, 2004, and appellant was sentenced to serve a term of 24 to 72 months in prison. No direct appeal was filed.

On August 22, 2005, appellant filed a proper person postconviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On October 31, 2005, the district court denied appellant's petition. On appeal of the denial, this court affirmed in part, reversed in part, and remanded the matter for an evidentiary hearing on whether appellant's counsel deprived him of a direct appeal of

his probation revocation.¹ After conducting an evidentiary hearing, the district court again denied the claim. This appeal followed.

Appellant claimed he verbally requested counsel file an appeal and requested an appeal in writing two days after his probation was revoked. The State produced the purported letter at the evidentiary hearing, but the district court noted there was no envelope or other proof the letter was sent when appellant said it was. Counsel testified that he had no recollection of appellant verbally requesting an appeal and had not received the letter. Counsel further testified that the Public Defender's file on appellant's probation revocation case did not contain the letter.

After hearing all the evidence, the district court concluded that appellant had failed to prove by a preponderance of the evidence that he had requested an appeal verbally or in writing.² The district court's factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal.³ Our review of the record on appeal indicates that the district court's findings were supported by substantial evidence and were not clearly wrong.⁴ Accordingly, we conclude the district court did not err in denying this claim.

¹Cobb v. State, Docket No. 46315 (Order Affirming in Part, Reversing in Part, and Remanding, July 10, 2006).

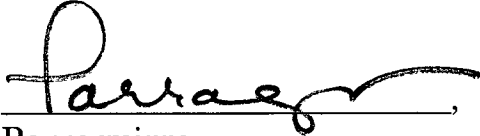
²See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

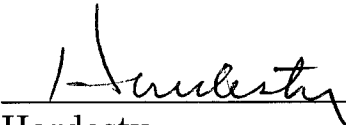
³Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

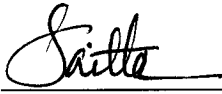
⁴See id.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Eighth Judicial District Court Dept. 6, District Judge
Paul Maurice Cobb
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).