

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN CHARLES FRITZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48572

FILED

OCT 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On March 10, 2000, appellant Kevin Charles Fritz was convicted, pursuant to a guilty plea, of one count of lewdness with a child under the age of 14 years. The district court sentenced Fritz to a prison term of 24 to 96 months, but then suspended execution of the sentence and placed Fritz on probation for a time period not to exceed 5 years. Fritz did not appeal from the judgment of conviction. On March 7, 2005, after conducting a hearing, the district court revoked Fritz's probation and imposed a reduced sentence of 19 to 72 months. Fritz did not appeal from the district court order revoking probation.

On August 23, 2005, Fritz filed a proper person post-conviction petition for a writ of habeas corpus. The State filed a motion to dismiss the petition, and Fritz filed a response to the motion to dismiss. Without conducting an evidentiary hearing, the district court dismissed the petition. Fritz appealed, and this court affirmed in part, reversed in part,

and remanded this matter to the district court for consideration of Fritz's claims on the merits.¹ On remand, the district court appointed counsel to represent Fritz and conducted an evidentiary hearing. On December 15, 2006, the district court denied the petition. Fritz filed this timely appeal.

Fritz contends that the district court abused its discretion in denying his petition. Fritz argues that defense counsel were ineffective for failing to file an appeal from the district court order revoking probation. Specifically, Fritz argues that there was convincing evidence presented at the post-conviction hearing that he requested an appeal. In the alternative, Fritz argues that defense counsel were ineffective for failing to challenge the condition of his probation prohibiting "any pornography" as unconstitutionally vague.²

The district court found that defense counsel were not ineffective under the standard set forth in Strickland v. Washington.³ In particular, the district court found that Fritz did not request an appeal, and that a challenge to the "no pornography" condition of Fritz's probation had no reasonable likelihood success on appeal. The district court's factual findings regarding a claim of ineffective assistance of counsel are

¹Fritz v. State, Docket No. 46643 (Order Affirming in Part, Reversing in Part, and Remanding, May 26, 2006).

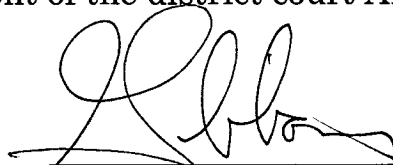
²In support of his contention, Fritz cites to United States v. Guagliardo, 278 F.3d 868, 872 (9th Cir. 2002) (holding that condition that probationer was forbidden to possess "any pornography" was unconstitutionally vague); but see Farrell v. Burke, 449 F.3d 470 (2d Cir. 2006) (rejecting claim that condition of parole prohibiting pornography was unconstitutionally vague).

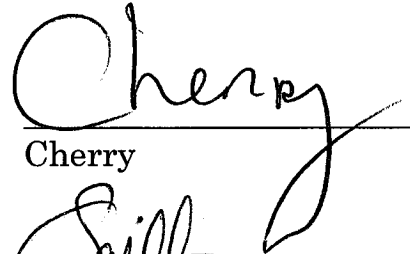
³466 U.S. 668 (1984).


entitled to deference when reviewed on appeal.⁴ Fritz has not demonstrated that the district court's finding was not supported by substantial evidence or was clearly wrong. Moreover, Fritz has not demonstrated that the district court erred as a matter of law.

Having considered Fritz's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Eighth Judicial District Court Dept. 6, District Judge
Ciciliano & Associates, LLC
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).