

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW A. DAVIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49451

FILED

OCT 03 2007

ORDER OF AFFIRMANCE

JANE M. BLOOM  
CLERK OF SUPREME COURT  
BY G. Alvarado  
DEPUTY CLERK

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David Wall, Judge.

On April 4, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of burglary while in possession of a firearm and six counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve a total of six consecutive terms of 24 to 84 months in the Nevada State Prison, the remaining terms to run concurrently. No direct appeal was taken.

On January 9, 2007, appellant filed a proper person post-conviction 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 April 26, 2007, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first claimed that his trial counsel was ineffective for failing to advise him of the right to a direct appeal and for failing to file a notice of appeal on his behalf. Appellant failed to demonstrate that his trial counsel was ineffective in this regard. The

record on appeal reveals that appellant was advised of his limited right to appeal in the written guilty plea agreement. Specifically, appellant was advised that by entry of his plea he waived his "right to appeal the conviction . . . unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035." Appellant acknowledged reading and understanding the guilty plea agreement during the plea canvass. Thus, appellant's contention that he was not advised of his limited right to appeal is belied by the record on appeal.<sup>1</sup> Moreover, there is no constitutional requirement that counsel must inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.<sup>2</sup> Appellant did not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, we conclude that the district court did not err in denying this claim.

Next, appellant claimed that he received ineffective assistance of trial counsel. Appellant claimed that he was represented by various attorneys from the Public Defender's Office prior to entry of his plea and that these attorneys were uninformed, unprepared, failed to communicate and did not effectively represent him. He further appeared to claim that

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<sup>1</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

<sup>2</sup>See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

the attorney who represented him at the plea canvass coerced his guilty plea by informing him that he should take the plea negotiations, that she believed that she could not be of assistance to him at trial, and that he faced a potential sentence of fifty years or more. Appellant claimed that he felt that if he did not take the negotiations that his attorney would not fight for him or try to reduce his sentence. Appellant failed to demonstrate that his trial counsel's performance was deficient or that there was a reasonable probability that he would have insisted on going to trial absent the alleged deficient performance.<sup>3</sup> Appellant failed to provide any specific facts indicating what investigation or preparation was not done by the various attorneys or what further communication should have occurred, and thus, appellant failed to demonstrate that he was prejudiced by the representation. Appellant acknowledged in the written guilty plea agreement and during the plea canvass that his guilty plea was freely and voluntarily entered and that he was not threatened into entering a guilty plea. Trial counsel's candid advice about the likelihood of success during a trial and the potential maximum sentence possible is not ineffective. Appellant received a substantial benefit by entry of his guilty plea in the instant case as he avoided eleven additional counts of burglary while in possession of a firearm, seven additional counts of robbery with the use of a deadly weapon and nine counts of conspiracy to commit robbery. Therefore, we conclude that the district court did not err in denying this claim.

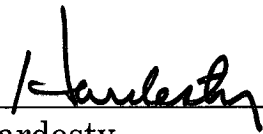
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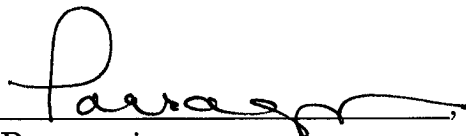
<sup>3</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

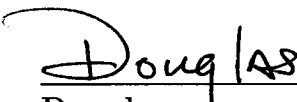
Finally, appellant claimed that his sentence was excessive, disproportionate and illegal as he was a first time felon with no violence in his record. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea.<sup>4</sup> Moreover as a separate and independent ground to deny relief, appellant's sentence was not illegal.<sup>5</sup> Therefore, we conclude that the district court did not err in denying this claim.

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.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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<sup>4</sup>See NRS 34.810(1)(a).

<sup>5</sup>See NRS 200.380; 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165); 1995 Nev. Stat., ch. 443, § 124, at 1215 (NRS 205.060); see also Edwards v. State, 112 Nev. 704, 918 P.2d 321 (1996).

<sup>6</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. David Wall, District Judge  
Matthew A. Davis  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk