

IN THE SUPREME COURT OF THE STATE OF NEVADA

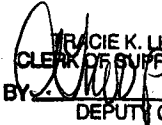
JEROD LEE UPDIKE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49542

**FILED**

FEB 08 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:  DEPUTY CLERK

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

On October 19, 2004, the district court convicted Updike, pursuant to a guilty plea, of one count of using technology to lure children. The district court sentenced Updike to serve a prison term of 12 to 48 months, suspended the sentence, and imposed probation for an indeterminate period of time not to exceed 60 months.<sup>1</sup> The district court additionally imposed a special sentence of lifetime supervision.<sup>2</sup> Updike did not file a direct appeal.

Updike filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court appointed counsel, and counsel filed a

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<sup>1</sup>On December 13, 2005, the district court revoked probation and imposed the original sentence. The probation revocation is not at issue in this appeal.

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supplement to the petition. Without conducting an evidentiary hearing, the district court dismissed Updike's petition. This appeal follows.

Updike contends that the district court erred in dismissing his petition without conducting an evidentiary hearing. Specifically, Updike claims that defense counsel was ineffective for failing to advise him of his right to appeal and for failing to challenge the legality of the lifetime supervision requirement. Updike contends that the lifetime supervision requirement violates his constitutional rights, including his right to a jury trial, right to free speech, right to be free from double jeopardy, and the right to travel. Updike also contends that the lifetime supervision requirement violates the separation of powers doctrine, amounts to cruel and unusual punishment, and is unconstitutionally vague and overbroad.

In this case, the district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.<sup>3</sup> In particular, the district court found that defense counsel was not ineffective for failing to challenge the lifetime supervision requirement because it is constitutional. Additionally, the district court found that defense counsel did not deprive Updike of his right to a direct appeal.<sup>4</sup> Updike has failed to show that the district court's findings are not

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<sup>3</sup>466 U.S. 668 (1984).


<sup>4</sup>We note that the written guilty plea agreement correctly informed Updike of his limited right to a direct appeal and that Updike was canvassed by the district court before entering his guilty plea. Further, Updike does not claim that he asked counsel to file an appeal. See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).


supported by the record or that the district court erred as a matter of law.<sup>5</sup> Accordingly, we conclude that the district court did not err in dismissing Updike's petition without conducting an evidentiary hearing.

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

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

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

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<sup>5</sup>See Riley v. State, 110 Nev. 638, 647-49, 878 P.2d 272, 278-79 (1994).