

IN THE SUPREME COURT OF THE STATE OF NEVADA


PAUL KENNETH HEATH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49953

FILED

JAN 18 2008

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is an appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Churchill County; Leon Aberasturi, Judge.

Appellant Paul Kenneth Heath, Jr., was convicted, pursuant to a jury verdict, of one felony count of driving under the influence (DUI). The district court sentenced Heath to serve a prison term of 24-60 months and ordered him to pay a fine of \$2,000. Heath did not pursue a direct appeal from the judgment of conviction and sentence.

On November 8, 2006, Heath filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss three of the four claims. The district court appointed counsel to represent Heath and granted the State's motion, finding that three of the claims were not appropriately raised in a post-conviction habeas petition.¹ The district court conducted an evidentiary hearing on the remaining claim – that counsel was ineffective for failing to file a direct appeal on Heath's behalf

¹See NRS 34.810(1)(b)(2).

– and on July 3, 2007, entered an order denying Heath’s petition. This timely appeal followed.

Heath contends that the district court erred in determining that he did not receive ineffective assistance of counsel resulting in the denial of his right to a direct appeal. Specifically, Heath claims that trial counsel failed to discuss appellate issues with him and respond to his request for a direct appeal.² We disagree.

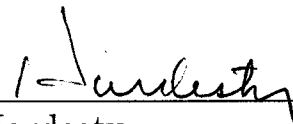
In his petition, Heath claimed that trial counsel, Paul Drakulich, failed to inform him about his right to an appeal and respond to his attempts to reach him. At the evidentiary hearing, however, Heath testified that he knew about his right to appeal, and was informed about the 30-day appeal period by other inmates approximately two weeks after sentencing. Drakulich testified at the evidentiary hearing and stated that, “immediately after the trial,” he did in fact discuss with Heath his right to an appeal and the merits of such an appeal, and that, in his opinion, an appeal “would be a waste of time.” Drakulich testified that Heath did not ask him to pursue an appeal at that time. Drakulich stated that he received a letter from Heath, several months after the expiration of the 30-day appeal period, wherein he inquired about an appeal. Drakulich replied and recommended, based on the issues raised in Heath’s letter, that he file a post-conviction habeas petition in the district court.

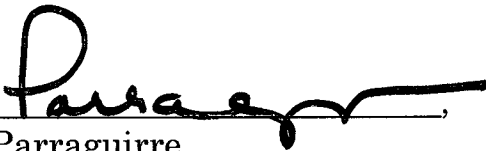
²See generally Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994) (“an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction”).

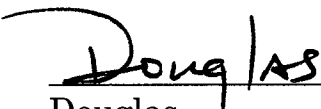
The district court found that counsel was not ineffective and that Heath was not improperly deprived of his right to a direct appeal. The district court found that Heath's testimony at the evidentiary hearing lacked credibility. The district court's factual findings are entitled to deference when reviewed on appeal.³ We conclude that Heath has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Heath has not demonstrated that the district court erred as a matter of law.

Therefore, having considered Heath's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Leon Aberasturi, District Judge
Martin G. Crowley
Attorney General Catherine Cortez Masto/Carson City
Churchill County District Attorney
Churchill County Clerk

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