

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER DAVIS A/K/A ROGER ALAN  
GROB,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49976

**FILED**

FEB 11 2008

TRACIE A. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. The district court sentenced appellant Roger Davis to serve a prison term of 72 to 240 months.

Davis first contends that the district court abused its discretion by denying his presentence motion to withdraw the guilty plea. In particular, Davis contends that his guilty plea was involuntary because he was under the influence of prescription medication and had difficulty understanding the nature and consequences of the guilty plea. Additionally, Davis contends that he should have been allowed to withdraw his plea because defense counsel was ineffective for failing to investigate. Davis alleges that defense counsel should have interviewed percipient witnesses and requested physical and psychological examinations of the victim.

The district court found that Davis' guilty plea was voluntary and that defense counsel was not ineffective with respect to the guilty

plea. Davis has failed to show that the district court abused its discretion in denying the presentence motion to withdraw the guilty plea.<sup>1</sup> We note that Davis signed a written plea agreement and was thoroughly canvassed in the district court. In the plea agreement, Davis acknowledged that he had discussed possible defenses with counsel, that he believed pleading guilty was in his best interest, and that he was not under the influence of any drug that would impair his ability to understand the proceedings. Further, the district court conducted an evidentiary hearing on the voluntariness of the guilty plea and concluded that Davis was competent to plead guilty.<sup>2</sup> Davis has failed to show that the district court's findings are not supported by substantial evidence or that the district court erred as a matter of law.<sup>3</sup>

Davis also alleges that defense counsel provided ineffective assistance at sentencing by advising Davis not to participate in the psychosexual evaluation. While acknowledging that this court will not generally review claims of ineffective assistance of counsel on direct appeal, Davis argues that this court should consider his contention because defense counsel's ineffectiveness is apparent from the face of the record.

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<sup>1</sup>See Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); see also Riley v. State, 110 Nev. 638, 647-49, 878 P.2d 272, 278-79 (1994).

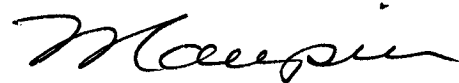
<sup>2</sup>We reject Davis' argument that the district court abused its discretion at the evidentiary hearing in refusing to hear testimony from Davis' treating physician and testimony in support of Davis' claim that counsel conducted a deficient investigation. See NRS 34.770; NRS 34.780; see also Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>3</sup>See Riley, 110 Nev. at 647-48, 878 P.2d at 278-79.

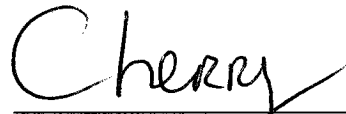
Claims of ineffective assistance of counsel "are generally more appropriately raised in the first instance in a post-conviction proceeding where the district court can conduct an evidentiary hearing to review and resolve factual uncertainties."<sup>4</sup> Davis has not demonstrated that a hearing to resolve issues of fact is unnecessary.<sup>5</sup> Therefore, we conclude that Davis' claim of ineffective assistance of counsel at sentencing is more appropriately raised in a post-conviction proceeding in the district court in the first instance.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

Maupin

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

Cherry

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

Saitta

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<sup>4</sup>Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

<sup>5</sup>See Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994) (concluding that evidentiary hearing was not necessary where counsel's actions were apparent from the record and were clearly improper).

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
Christopher R. Oram  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk