

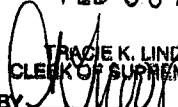
IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS MICHAEL KANSKI,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50110

**FILED**

FEB 08 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Dennis Michael Kanski's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On December 30, 2003, the district court convicted Kanski, pursuant to a guilty plea, of one count of possession of a slot machine cheating device. The district court sentenced Kanski to serve a prison term of 12 to 72 months and imposed the prison term to run consecutively to the sentence imposed in another case. Kanski did not file a direct appeal.

On December 16, 2004, Kanski filed a timely proper person post-conviction petition for a writ of habeas corpus in which he raised several claims of ineffective assistance of counsel. The State filed a motion for partial dismissal of the petition. The district court appointed counsel to represent Kanski, and counsel filed a supplemental petition and an opposition to the State's motion for partial dismissal.

On January 26, 2006, the district court granted the State's motion for partial dismissal. Thereafter, the district court held an evidentiary hearing on Kanski's appeal deprivation claim, entered findings of fact and conclusions of law, and ordered the petition denied. This appeal follows.

First, Kanski contends that the district court erred by concluding that he did not receive ineffective assistance of counsel. Kanski specifically claims that defense counsel was ineffective for failing to file a pretrial motion to suppress a slot machine cheating device that he alleges was seized during an illegal search of his car.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.<sup>1</sup> To show prejudice, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."<sup>2</sup> The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.<sup>3</sup>

During the evidentiary hearing on Kanski's appeal deprivation claim, defense counsel testified that he represented Kanski on the possession of a slot machine cheating device charge, an assault with a deadly weapon allegation, and a separate case involving a gaming offense and a burglary. Counsel discussed the suppression issue with Kanski and they decided to enter negotiations with the State in order to avoid prosecution for assault with a deadly weapon and adjudication as a habitual criminal in the two pending cases. Counsel informed Kanski that

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<sup>1</sup>Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

<sup>2</sup>Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

<sup>3</sup>See Strickland, 466 U.S. at 697.

if they filed a suppression motion, the State's agreement not to pursue "habitual criminality would be off the table." Under these circumstances, we conclude that Kanski has not demonstrated a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Accordingly, Kanski was not prejudiced by defense counsel's performance and the district court did not err by denying this claim.

Second, Kanski contends that the district court erred by not conducting an evidentiary hearing on all of his claims. Kanski specifically asserts that he was entitled to an evidentiary hearing on his claims that defense counsel was ineffective for failing to communicate, investigate, and prepare a defense.

"A post-conviction habeas petitioner is entitled to an evidentiary hearing 'only if he supports his claims with specific factual allegations that if true would entitle him to relief.' However, if the record belies the petitioner's factual allegations, the petitioner is not entitled to an evidentiary hearing."<sup>4</sup>

Our review of the record on appeal reveals that Kanski's claim that defense counsel did not communicate with him is belied by the record, and his claims that defense counsel did not investigate and did not prepare a defense lack specificity. Accordingly, we conclude that the district court did not err by denying these claims without an evidentiary hearing.

Third, Kanski contends that the district court erred by finding that he was not deprived of his right to a direct appeal. The district court's factual findings are entitled to deference when reviewed on

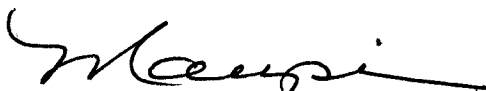
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<sup>4</sup>Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (quoting Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004)).

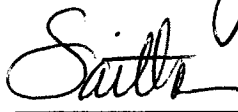
appeal.<sup>5</sup> Here, defense counsel testified that "after the Judge ran the sentences consecutively, Mr. Kanski was disappointed, to put it mildly. And I recall telling him that he would still have the right to appeal, but he had to let me know within 30 days." Defense counsel further testified that he told Kanski that he did not see any grounds for appeal and that after sentencing he did not hear from Kanski again. The district court found that defense counsel's testimony was credible and determined that Kanski was not deprived of a direct appeal. Under these circumstances, we conclude that the district court did not err by denying this claim.

Having considered Kanski's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
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Maupin J.

  
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Cherry J.

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

cc: Hon. Steven P. Elliott, 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, 878 P.2d 272, 278 (1994).