

IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY ALLIN SUCHANKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50458

**FILED**

DEC 26 2008

TRACE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is an appeal from a district court order denying appellant Troy Allin Suchanko's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Suchanko was convicted, pursuant to a guilty plea, of one count of possession of a stolen vehicle. The district court sentenced Suchanko to serve a prison term of 48-120 months. Suchanko did not file an appeal from the judgment of conviction and sentence.

On January 17, 2007, Suchanko 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 to represent Suchanko and counsel filed a supplement to the petition. The State opposed the supplemental petition. The district court conducted an evidentiary hearing and, on September 28, 2007, entered an order denying Suchanko's petition. This timely appeal followed.

First, Suchanko contends that there was insufficient evidence presented at the preliminary hearing to bind him over to the district court on the category B felony charge of possession of a stolen vehicle.

Specifically, Suchanko claims that the State failed to prove that the value of the vehicle met or exceeded \$2,500 and, therefore, he should have been charged with a category C felony.<sup>1</sup> Additionally, Suchanko contends that counsel was ineffective for failing to investigate and raise the issue in his pretrial petition for a writ of habeas corpus.

Initially, we note that Suchanko waived any challenge to the sufficiency of the evidence presented at the preliminary hearing by pleading guilty. This court has repeatedly stated that, generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea.<sup>2</sup> “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”<sup>3</sup> Moreover, there is no indication in the record that Suchanko expressly preserved this issue for review on appeal.<sup>4</sup>

Additionally, we conclude that the district court did not err by finding that counsel was not ineffective in this regard.<sup>5</sup> Suchanko has failed to demonstrate that, but for counsel’s failure to investigate and

---

<sup>1</sup>See NRS 205.273(3)-(4).

<sup>2</sup>See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

<sup>3</sup>Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)) (alteration in original).

<sup>4</sup>See NRS 174.035(3).

<sup>5</sup>Strickland v. Washington, 466 U.S. 668 (1984); see also Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

challenge the monetary value of the stolen vehicle, he would not have pleaded guilty and would have proceeded to trial.<sup>6</sup> In exchange for Suchanko's guilty plea, the State agreed to dismiss the counts of possession of a controlled substance with the intent to sell and possession of burglary tools. And our review of the record on appeal reveals that at all stages in the proceedings below, Suchanko was informed and understood that he was being charged with and pleading guilty to a category B felony and not a category C felony. Therefore, to the extent that Suchanko claims that his plea was not entered knowingly or intelligently, we disagree.<sup>7</sup>

Second, Suchanko appears to argue that the district court erred by imposing an illegal sentence and therefore his sentence should be corrected or modified. Suchanko, however, has not provided any analysis applying the relevant statutes and case law to the facts of his case. To the extent that Suchanko is claiming that his sentence is illegal because he should have been sentenced for a category C felony, we disagree. Suchanko pleaded guilty to a category B felony and he has failed to demonstrate that either (1) the district court was without jurisdiction to impose a sentence or the sentence was imposed in excess of the statutory

---

<sup>6</sup>Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

<sup>7</sup>State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000) (the validity of a guilty plea is determined by looking at the totality of the circumstances); Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986).

maximum, or (2) his sentence was based on a mistaken assumption about his criminal record which worked to his extreme detriment.<sup>8</sup>

Finally, Suchanko contends that the district court erred by failing to find that counsel was ineffective for depriving him of his right to a direct appeal. Suchanko claims that he therefore is entitled to the Lozada remedy.<sup>9</sup> We agree.

In Lozada, this court recognized that “an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction.”<sup>10</sup> If counsel fails to file an appeal after a convicted defendant makes a timely request, the defendant is entitled to the Lozada remedy and may file a post-conviction habeas petition, with the assistance of counsel, raising direct appeal issues for appellate consideration.<sup>11</sup> Notably, in order to be afforded the Lozada remedy, a petitioner is not required to present any direct appeal claims or demonstrate that he would have succeeded on appeal; rather, a petitioner must only show that he was deprived of his right to a direct appeal without his consent.<sup>12</sup> Prejudice is presumed when an appellant instructs counsel to file an appeal and counsel fails to do so.<sup>13</sup>

---

<sup>8</sup>See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

<sup>9</sup>Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>10</sup>Id. at 354, 871 P.2d at 947.

<sup>11</sup>Id. at 359, 871 P.2d at 950.


<sup>12</sup>Id.


<sup>13</sup>Mann v. State, 118 Nev. 351, 353-54, 46 P.3d 1228, 1229-30 (2002).

At the evidentiary hearing on Suchanko's petition, former counsel, David Brown, testified that Suchanko asked him to file a direct appeal on his behalf and that he failed to do so. Brown stated that instead of filing the notice of appeal, as requested by Suchanko, he withdrew as counsel. Nevertheless, in its order denying the petition, the district court stated that Suchanko "failed to make a showing that he was denied the right to a direct appeal." We disagree and conclude that the district court erred by not finding that Suchanko was improperly denied his right to a direct appeal. Accordingly, we reverse the district court order in part and remand this matter to allow Suchanko, with the assistance of counsel, to file a post-conviction petition for a writ of habeas corpus raising direct appeal issues pursuant to Lozada. The district court should then conduct a meaningful review of the claims raised in the Lozada petition.

Therefore, having considered Suchanko's contentions and concluded that the district court erred by failing to provide him with the Lozada remedy, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

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

cc: Hon. David B. Barker, District Judge  
Kristina M. Wildeveld  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk