

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS STUART SERBA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50519

FILED

JUN 09 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Dennis Serba's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On May 12, 2005, the district court convicted Serba, pursuant to a guilty plea, of one count of battery with the intent to commit sexual assault. The district court sentenced Serba to serve a prison term of 6 to 16 years. Serba did not file a direct appeal.

Serba filed a timely post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Counsel filed a supplemental petition. Following an evidentiary hearing, the district court denied Serba's petition. This appeal follows.

Serba contends that the district court erred by denying his claim that he was improperly deprived of his right to a direct appeal. In support of his contention, Serba claims that the district court abused its

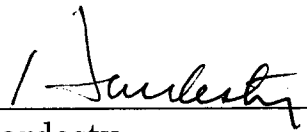
discretion in finding that defense counsel was more credible than Serba and his witness, in finding that defense counsel was not ineffective for failing to file a direct appeal based on Serba's dissatisfaction with his sentence, and in failing to inquire into Serba's direct appeal issues and whether they had merit. The district court's factual findings are supported by substantial evidence.¹ In particular, defense counsel testified that he had no record of Serba requesting a direct appeal, and his phone log did not contain a record of a phone call from Serba following sentencing. Defense counsel testified that if Serba had requested an appeal, he would have given the case file to the appellate division of the Public Defender's Office. Serba's case file did not contain the letter he alleges he sent to counsel, and Serba could not explain where he had access to a copy machine in order to copy the letter he claims to have mailed to defense counsel. Serba has not demonstrated that the district court's findings of fact are clearly wrong. Moreover, Serba has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude that the district court did not err in denying Serba's petition.²

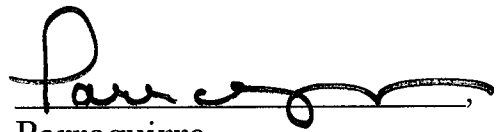
¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

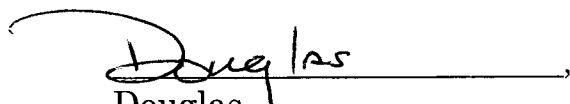
²Serba also claimed in his petition that he was not competent at entry of his plea because he was taking Prozac. We note that Serba withdrew this claim at the beginning of the evidentiary hearing, and thus, we refuse to consider it here. We will review on appeal only claims presented to the district court in the first instance. See State v. Powell, 122 Nev. 751, 756, 138 P.3d 453, 456 (2006).

Having considered Serba's contention and determined that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jerome Polaha, District Judge
Mary Lou Wilson
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk