


IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM LEON KERR,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
BILL DONAT,
Respondent.

No. 50536

FILED

FEB 08 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

On March 8, 2006, appellant William Leon Kerr was convicted, pursuant to a guilty plea, of one count of trafficking in a controlled substance. The district court sentenced Kerr to serve a prison term of 28 to 72 months. Kerr did not file a direct appeal.

On January 10, 2007, Kerr filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Kerr. After conducting an evidentiary hearing, the district court dismissed the petition. Kerr filed this timely appeal.

Kerr contends that the district court erred in rejecting his claims of ineffective assistance of counsel. In particular, Kerr contends that defense counsel was ineffective at the sentencing hearing for failing to present character witnesses and for failing to argue that his sentence should run concurrently with the sentence imposed in another case.

The district court found that defense counsel was not ineffective under the standard set forth in Strickland v. Washington.¹ The district court's findings regarding claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.² The burden is on the appellant to provide this court with an adequate record enabling this court to review assignments of error.³ Kerr has not provided an adequate record demonstrating that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.⁴ Moreover, Kerr has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude the district court did not err in rejecting Kerr's claims of ineffective assistance of counsel.

Kerr also argues that the sentence imposed constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. Kerr waived his right to raise this issue by failing to pursue it in a direct appeal.⁵

¹466 U.S. 668 (1984).

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

³Greene v. State, 96 Nev. 555, 612 P.2d 686 (1980); Lee v. Sheriff, 85 Nev. 379, 455 P.2d 623 (1969).


⁴We note that Kerr has failed to provide this court with a transcript of the evidentiary hearing and it appears that the hearing was unrecorded. We also note that Kerr has not filed a motion to provide a statement of the proceedings pursuant to NRAP 9(d).

⁵See NRS 34.810(1)(a); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in


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Having considered Kerr's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.

Maupin


_____, J.

Cherry


_____, J.

Saitta

cc: Hon. Andrew J. Puccinelli, District Judge
Humboldt-Pershing County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Elko County District Attorney
Elko County Clerk
William Leon Kerr

... continued

subsequent proceedings"), overruled on other grounds by *Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

⁶Because Kerr is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action on and shall not consider the proper person documents Kerr has submitted to this court in this matter.