

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LASHAWN WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50781

FILED

AUG 13 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 Michael Lashawn Williams' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

On October 11, 2005, the district court convicted Williams, pursuant to a guilty plea, of one count of burglary. The district court sentenced Williams to serve a prison term of 24 to 96 months. Williams did not file a direct appeal.

On March 16, 2006, Williams filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Williams, and counsel filed a supplemental petition. The State moved to dismiss both petitions. The district court dismissed some of Williams' claims, conducted an evidentiary hearing on the remaining claims, and denied the petition and supplemental petition. This appeal follows.

First, Williams contends that the district court abused its discretion by dismissing his claims of insufficient evidence, breach of plea

agreement, and vindictive prosecution without the benefit of an evidentiary hearing.

NRS 34.810(1)(a) provides that a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea may only raise allegations that “the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.” Williams’ claims of insufficient evidence, breach of plea agreement, and vindictive prosecution fall outside the limited scope of claims that may be raised pursuant to NRS 34.810(1)(a) and, accordingly, they should have been denied on this procedural ground. We specifically note that Williams waived the breach issue by failing to raise it in a direct appeal,¹ and we conclude that the district court did not err by denying these claims.²

Second, Williams contends that the district court abused its discretion by denying his appeal deprivation claim. Williams specifically claims that counsel was ineffective for failing to advise him of the right to appeal.³

¹See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (noting that all claims that are appropriate for direct appeal must be raised on direct appeal or they are waived and that a claim that the State breached the plea agreement at sentencing is a claim that is appropriate for direct appeal), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

²See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the judgment of district court if it reached the right result for the wrong reason).

³Williams also argues that the Lozada remedy is inadequate. In Lozada v. State, 110 Nev. 349, 359, 871 P.2d 944, 950 (1994), we held that
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While "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal," counsel is obligated to inform a defendant of his right to appeal under certain circumstances.⁴ "One such circumstance is when the defendant inquires about an appeal. Another circumstance is when the situation indicates that the defendant may benefit from receiving the advice, such as the existence of a direct appeal claim that has a reasonable likelihood of success."⁵

Williams did not allege that he inquired about an appeal nor did he demonstrate the existence of a direct appeal claim with a reasonable likelihood of success. The district court found that the situation surrounding Williams' conviction and sentence did not indicate that he would have benefited from being informed of his right to appeal, a reasonable attorney would not have believed that Williams would have benefited from such information, and the appellate issues raised by Williams in his petitions did not have a reasonable probability of success on appeal. Our review of the record on appeal reveals that the district

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the appropriate remedy for a defendant who was denied his right of appeal is to allow him the opportunity to raise his appellate issues in a petition for a writ of habeas corpus. Because Williams is not entitled to a Lozada remedy, we decline to address the remedy's adequacy.

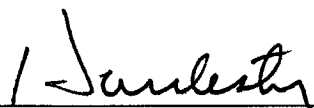
⁴Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999).

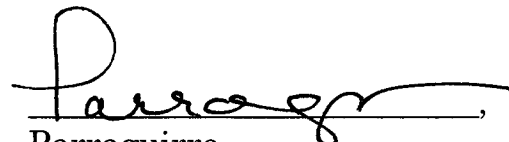
⁵Id.

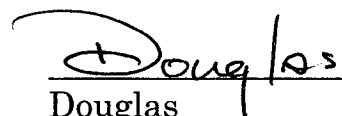
court's findings of fact are supported by substantial evidence.⁶ Williams has not demonstrated that the district court was clearly wrong, and we conclude that the district court did not abuse its discretion by denying his appeal deprivation claim.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Patrick Flanagan, District Judge
Karla K. Butko
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (the district court's factual findings are entitled to deference when reviewed on appeal).