

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LAWSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50828

**FILED**

AUG 29 2008

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

On February 20, 2007, the district court convicted appellant Michael Lawson, pursuant to a guilty plea, of one count of conspiracy to commit robbery and one count of robbery. The district court sentenced appellant to serve a term of 13 to 52 months for the conspiracy count and a concurrent term of 24 to 84 months for the robbery count in the Nevada State Prison. No direct appeal was taken.

On July 11, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On December 13, 2007, the district court denied appellant's petition. This appeal followed.

First, appellant claimed that the district court abused its discretion because a codefendant was sentenced to serve probation and appellant was sentenced to a serve a term in prison. This claim fell outside the scope of claims permissible in a habeas corpus petition based upon a guilty plea.<sup>1</sup> Therefore, the district court did not err in denying this claim.

Next, appellant claimed that his plea was invalid. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently.<sup>2</sup> Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion.<sup>3</sup> In determining the validity of a guilty plea, this court looks to the totality of the circumstances.<sup>4</sup>

Appellant claimed his plea was coerced and that he pled guilty based upon promises from his trial counsel that he would be sentenced to a term of probation. Appellant failed to carry his burden of demonstrating that his plea was invalid. In the guilty plea agreement signed by

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<sup>1</sup>NRS 34.810(1)(a).

<sup>2</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also Hubbard v. State, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

<sup>3</sup>Hubbard, 110 Nev. at 675, 877 P.2d at 521.

<sup>4</sup>State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); Bryant, 102 Nev. at 271, 721 P.2d at 367.

appellant, appellant acknowledged that the sentencing judge had the discretion to sentence appellant to probation and that he had not been promised or guaranteed any particular sentence by anyone. Further, the guilty plea agreement informed appellant of the potential sentences he could receive. Appellant also acknowledged in the agreement that he was signing voluntarily and not "by virtue of any promises of leniency." The guilty plea agreement also contained statements that appellant's plea was not the product of coercion or improper threats. Additionally, at the plea canvass, appellant represented to the district court that he had not been made any promises or threatened in order to induce him to plead guilty. At the plea canvass, the district court informed appellant of the possible range in sentences for the two counts. Therefore, appellant failed to demonstrate that his plea was coerced and we conclude that the district court did not err in denying this claim.

Finally, appellant claimed that his trial counsel told him that he had no right to a direct appeal following a guilty plea and that, despite repeated requests from appellant, his trial counsel failed to file a notice of appeal or respond to appellant's requests.

Based upon this court's review of the record on appeal, we conclude that the district court erred in failing to conduct an evidentiary hearing on these claims. Appellant is entitled to an evidentiary hearing if he raised claims that, if true, would entitle him to relief and if his claims

were not belied by the record.<sup>5</sup> It is not a correct statement of law that a criminal defendant has no right to file a direct appeal from a judgment of conviction based upon a guilty plea. Rather, a direct appeal from a judgment of conviction based upon a guilty plea is limited in scope to “reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings” and those grounds permitted pursuant to NRS 174.035(3).<sup>6</sup> Although appellant was informed of his limited right to a direct appeal in the written guilty plea agreement,<sup>7</sup> appellant claimed that trial counsel informed him that he did not have a right to a direct appeal. Misinformation about the availability of the right to a direct appeal may have the effect of deterring a criminal defendant from requesting a direct appeal. Notably, trial counsel has an obligation to file a direct appeal when a criminal defendant requests a direct appeal or otherwise expresses a desire to appeal.<sup>8</sup> Without an evidentiary hearing on the underlying factual allegations supporting this claim, this court is unable to affirm the decision of the district court denying this claim.

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<sup>5</sup>See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

<sup>6</sup>See NRS 177.015(4); see also Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994); overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

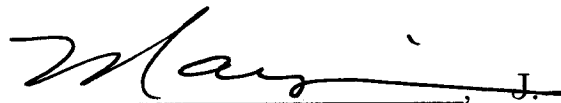
<sup>7</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

<sup>8</sup>See Thomas, 115 Nev. 148, 979 P.2d 222.

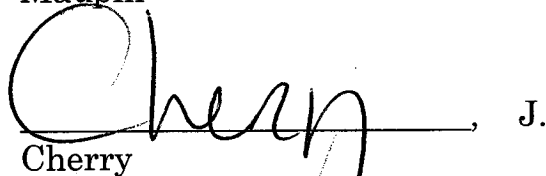
Therefore, we reverse the district court's decision to deny this claim and remand for an evidentiary hearing on whether trial counsel was ineffective in regards to the availability of a direct appeal.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and briefing are unwarranted in this matter.<sup>9</sup> Accordingly, 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.<sup>10</sup>



Maupin



Cherry



Saitta

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<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>10</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.

cc: Hon. Valorie Vega, District Judge  
Michael Lawson  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk