

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDUARDO LICON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50914

FILED

FEB 27 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Eduardo Licon's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Licon was convicted, pursuant to an Alford plea, of two counts of possession of stolen property and one count of attempted sexual assault. North Carolina v. Alford, 400 U.S. 25 (1970).¹ The district court sentenced Licon to serve two concurrent prison terms of 12-32 months and a concurrent prison term of 36-150 months. This court granted Licon's motion to voluntarily withdraw his direct appeal. Licon v. State, Docket No. 45844 (Order Dismissing Appeal, January 11, 2006).

Licon filed a 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 Licon and counsel filed a

¹At one point in the proceedings below, Licon was charged with three counts of sexual assault, two counts of open or gross lewdness, one count of robbery of a victim 65 years of age or older, two counts of possession of stolen property, and one count of grand larceny.

supplement to the petition. The State filed an opposition to the supplement. The district court conducted an evidentiary hearing and, on December 19, 2007, entered an order denying Licon's petition. This timely appeal followed.

Licon contends that the district court erred by denying his habeas petition. Specifically, Licon argues that counsel was ineffective for failing to pursue a direct appeal from the judgment of conviction and challenge the district court's denial of his presentence motion to withdraw his guilty plea. This claim is belied by the record. See Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). A timely notice of appeal was filed after the entry of the judgment of conviction and, as noted above, this court subsequently granted Licon's motion to voluntarily withdraw his direct appeal. In the order dismissing Licon's appeal, we noted the following:

counsel advises that he has informed appellant of the legal effects and consequences of voluntarily withdrawing this appeal, including that appellant cannot hereafter seek to reinstate this appeal, and that any issues that were or could have been brought in this appeal are forever waived. Having been so informed, appellant consents to a voluntary dismissal of this appeal.

Licon, Docket No. 45844 (Order Dismissing Appeal, January 11, 2006), at 1. Appellate counsel also provided this court, pursuant to NRAP 3C, with verification that Licon wished to voluntarily withdraw his appeal. Therefore, we conclude that counsel was not ineffective for improperly depriving Licon of his right to a direct appeal.

Licon also contends that counsel was ineffective for failing to investigate. Licon claims that due to counsel's failure, "he had no alternative [but] to plead guilty." Licon also seems to claim that because

counsel failed to investigate, counsel should have withdrawn from the case and allowed new counsel to file his presentence motion to withdraw the guilty plea. Central to Licon's allegation is his claim of innocence to the charge of attempted sexual assault; specifically, he states "that if his fingers touched, or were inserted of anyone [sic], it was purely by accident." We conclude that Licon is not entitled to relief.

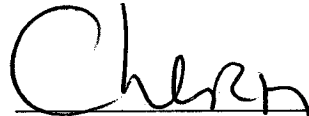
At the evidentiary hearing on the petition, Licon's former counsel testified and detailed his investigation into the case, which included, among other things, 40-50 hours of work by a hired investigator. Counsel testified that he was prepared to go to trial, if Licon so desired. The district court found counsel's testimony credible. In its order denying the petition, the district court stated that Licon "failed to illustrate what an investigation would have yielded and how the results of that investigation would have produced a different outcome, i.e., that the specific results of the investigation would have made him go to trial instead of accepting a plea agreement." Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). The district court also rejected Licon's claim of actual innocence, and we note that Licon has not provided any argument in support of his claim other than his own denial of guilt.

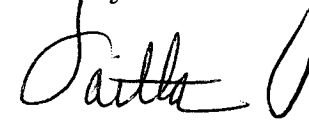
The district court found that Licon did not receive ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). The district court's factual findings are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Licon has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Licon has not demonstrated that the district court erred as a

matter of law. Therefore, we conclude that the district court did not err by denying Licon's petition.

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

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Eighth Judicial District Court Dept. 8, District Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk