

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT D. DARTING,

No. 34587

Appellant,

vs.

FILED

WARDEN, NEVADA STATE PRISON, E.K.
MCDANIEL,

APR 12 2001

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On October 20, 1997, the district court convicted appellant, pursuant to a guilty plea, of two counts of sexual assault. The district court sentenced appellant to serve two concurrent terms of life in prison with the possibility of parole after twenty years. Appellant filed an untimely notice of appeal, which this court dismissed for lack of jurisdiction.¹

On September 29, 1998, appellant filed a proper person post-conviction petition for a writ of habeas corpus. Appellant subsequently filed an amended petition. Although the district court initially appointed counsel to represent appellant, the district court vacated that order and allowed appellant to represent himself after appellant complained that he did not want counsel appointed to represent him. The district court conducted an evidentiary hearing. On July 28,

¹See Darting v. State, Docket No. 31467 (Order Dismissing Appeal, December 24, 1997).

1999, the district court denied appellant's petitions. This timely appeal followed.

In his petitions, appellant contended that trial counsel failed to inform him of his right to appeal. This court has held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal" absent extraordinary circumstances.² Appellant failed to demonstrate any such extraordinary circumstances in this case, and our review of the record does not reveal any such extraordinary circumstances. Moreover, the record reflects that appellant was sufficiently advised of his limited right to appeal. Trial counsel testified that he informed appellant of his limited right to appeal at the time appellant entered his guilty plea and after sentencing. The district court found that testimony to be credible, and we must give deference to that finding.³ Additionally, we note that the record indicates that the district court also informed appellant of his limited right to appeal during the plea canvass. Therefore, our review of the record indicates that the district court did not err in rejecting this claim.

Appellant also contended that his counsel was ineffective for failing to perfect a direct appeal without his consent. This court has held that counsel does not have a duty to secure a client's consent not to file an appeal; rather, "[t]he burden is on the client to indicate to his

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

³See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

attorney that he wishes to pursue an appeal."⁴ Trial counsel testified that appellant appeared to be pleased with the outcome of the case after sentencing and that appellant did not express a desire to pursue an appeal until after the 30-day appeal period had expired. The district court found that testimony to be credible, and we must give deference to that finding.⁵ Accordingly, we conclude that the district court did not err in rejecting this claim.

Next, appellant contended that the district court failed to advise him of his right to appeal. This claim is belied by the record, and appellant therefore is not entitled to relief based on this claim.⁶

Appellant also contended that NRS 177.075 violates the Equal Protection Clause because it only requires the district court to notify certain defendants of their right to appeal.⁷ Because the record demonstrates that the district court informed appellant of his limited right to appeal during the plea canvass, we conclude that appellant's equal protection claim lacks merit.

Finally, appellant contended that his guilty plea was coerced and was the result of a vindictive prosecution. A guilty plea is presumptively valid, and a petitioner has the burden of establishing that the plea was not entered knowingly

⁴Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

⁵See Howard, 106 Nev. at 722, 800 P.2d at 180.

⁶See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

⁷NRS 177.075(2) provides that "[w]hen a court imposes sentence upon a defendant who has not pleaded guilty or guilty but mentally ill and who is without counsel, the court shall advise the defendant of his right to appeal."

and intelligently.⁸ Based on our review of the record, we conclude that appellant failed to meet that burden. The transcript of the plea canvass reveals that appellant knowingly and intelligently pleaded guilty and that he was not coerced into doing so. Appellant has not presented any specific allegations or evidence to the contrary. Moreover, appellant's admission of his guilt during the plea canvass belies his claims that the State lacked any evidence and prosecuted appellant out of vindictiveness.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Peter I. Breen, District Judge
Attorney General
Washoe County District Attorney
Scott D. Darting
Washoe County Clerk

⁸Paine v. State, 110 Nev. 609, 619, 877 P.2d 1025, 1031 (1994).

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