

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN EDWARD BOWEN,

No. 34633

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

AUG 16 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER OF REMAND

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

On July 31, 1998, the district court convicted appellant, pursuant to a guilty plea, of theft. The district court sentenced appellant to serve a term of seventy-two (72) months with a minimum parole eligibility of sixteen (16) months in the Nevada State Prison. Appellant did not file a direct appeal.

On February 10, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a supplement to the petition. On August 4, 1999, the district court denied appellant's petition without conducting an evidentiary hearing. This appeal followed.

Our review of the record on appeal revealed that the district court may have erroneously denied appellant's petition without conducting an evidentiary hearing. Appellant contended below that he was not informed of his right to appeal and that he indicated to counsel that he wished to file a direct appeal and counsel told appellant, "there was nothing counsel could

do." Appellant's contention, if true, may entitle him to relief. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984); see also Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).


Accordingly, on June 30, 2000, we ordered the State to show cause why this appeal should not be remanded to the district court for an evidentiary hearing to determine whether or not counsel's performance fell below an objective standard of reasonableness. See Strickland v. Washington, 466 U.S. 668 (1984). The State responded to our order on July 27, 2000.

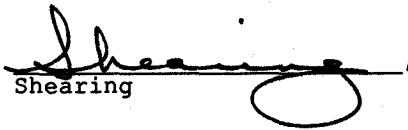
The State contends that this court should not consider his appeal deprivation claim because appellant, in his petition, failed to properly identify his claim that his counsel was ineffective for failing to file a notice of appeal. Appellant did not list this claim as a ground for relief; rather, appellant included it as his reason for failing to pursue a direct appeal. Thus, the State contends appellant's claim was not before the district court. This contention lacks merit. Appellant's appeal deprivation claim was raised on the face of his petition as well as in his supplemental brief supporting his petition. Therefore, appellant's claim that his counsel failed to file a notice of appeal after appellant conveyed an interest in a direct appeal was properly before the district court.


Accordingly, we remand this matter to the district court to conduct an evidentiary hearing on the issue of whether appellant's counsel failed to file a notice of appeal after appellant expressed a desire to appeal. If the court determines that appellant's counsel failed to file a notice of appeal after appellant expressed a desire to appeal, the district court shall appoint counsel to represent appellant and shall permit

appellant to file a petition for a writ of habeas corpus raising any issues appellant could have raised on direct appeal. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
John Edward Bowen
Clark County Clerk