

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENDRICK DESHAUN PARKER A/K/A
KEDRICK DESHAUN PARKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51433

FILED

DEC 17 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
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 appellant's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On June 13, 2007, the district court convicted appellant, pursuant to a guilty plea, of second-degree kidnapping, pandering of a child, and conspiracy to commit pandering of a child (a gross misdemeanor). The district court sentenced appellant to serve concurrent terms of 26 to 72 months in the Nevada State Prison for the kidnapping count, 26 to 72 months for the pandering count, and 12 months for the conspiracy count. No direct appeal was taken.

On December 6, 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 34.770, the

district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On March 6, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that the State breached the guilty plea agreement and that the district court erred when it sentenced him to a term in excess of the guilty plea agreement. These claims were not cognizable because they did not challenge the voluntariness of the plea or the effectiveness of counsel.¹ Therefore, the district court did not err in denying these claims.

Appellant also claimed that he did not file a direct appeal because his trial counsel informed him that he had no right to file a direct appeal. We conclude that the district court erred in failing to conduct an evidentiary hearing on this claim. Appellant is entitled to an evidentiary hearing if he raises claims that, if true, would entitle him to relief and if his claims were not belied by the record.² 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, jurisdiction or other grounds that challenge the legality of the proceedings" and those grounds permitted pursuant to

¹NRS 34.810(1)(a).

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

NRS 174.035(3).³ Although appellant was informed of his limited right to a direct appeal in the written guilty plea agreement,⁴ 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.⁵ Without an evidentiary hearing on the underlying factual allegations, this court is unable to affirm the decision of the district court denying appellant's claim. Therefore, we reverse the district court's decision to deny this claim and remand for an evidentiary hearing on whether trial counsel was ineffective with regard to the availability of a direct appeal.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that briefing and oral argument are unwarranted.⁶ Accordingly, we

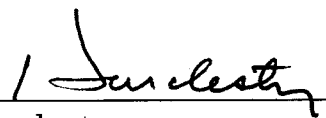
³See NRS 177.015(4); see also Franklin v. State, 110 Nev. 750, 751-52, 877 P.2d 1058, 1058-59 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

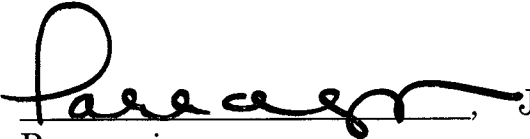
⁴See Davis v. State, 115 Nev. 17, 18-20, 974 P.2d 658, 659-60 (1999).


⁵See Thomas, 115 Nev. at 151, 979 P.2d at 224.

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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.⁷


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
Kendrick Deshaun Parker
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁷This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.