

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR DENNIS DANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51743

FILED

DEC 09 2009

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

ORDER OF AFFIRMANCE

This is an 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; Lee A. Gates, Judge.

On June 7, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced appellant to serve a term of life with the possibility of parole after 10 years in the Nevada State Prison. No direct appeal was taken.

On March 13, 2007, appellant 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 appellant and conducted an evidentiary hearing on March 31, 2008. On April 24, 2008, the district court denied appellant's petition. This appeal followed.

On appeal, appellant claims that the district court erred by denying his claim that he was deprived of his direct appeal. Specifically, appellant claims that he requested trial counsel to file an appeal, but an appeal was never filed.

At sentencing, appellant was represented by John Momot, who had been hired to determine whether appellant should try to withdraw his plea.¹ At the evidentiary hearing, appellant testified that he asked Momot to file an appeal as Momot was walking away and that Momot may not have heard him. Appellant also testified that his sister called Momot, however, Momot testified that appellant's sister never called him. Momot testified at the hearing that appellant never requested him to file an appeal. Further, Momot testified that no non-frivolous issues existed, but that if appellant had asked Momot to file an appeal, Momot would have done so.

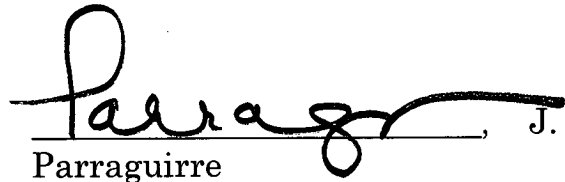
The district court found Momot's testimony to be credible and was supported by the evidence and denied appellant's appeal deprivation claim. We conclude that the district court's findings were based upon substantial evidence and are not clearly wrong. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal). Therefore, the district court did not err in denying this claim.

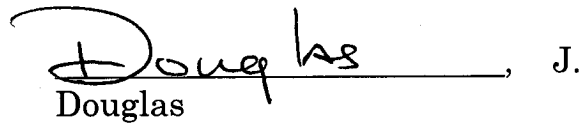
Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that

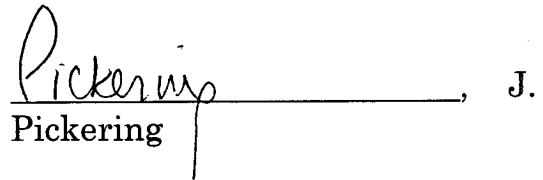
¹After conducting extensive investigation into appellant's case, Momot determined that withdrawing appellant's plea would be against appellant's best interest. Appellant agreed with this assessment and signed a waiver agreeing that he no longer wanted to withdraw his plea.

briefing and oral argument are unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

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