

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE MIGUEL GUTIERREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52161

FILED

DEC 23 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 appellant Jose Gutierrez's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; John P. Davis, Judge.

The district court convicted Gutierrez, pursuant to a guilty plea, of two counts of trafficking in a controlled substance. The district court sentenced Gutierrez to serve two consecutive prison terms totaling 16 to 40 years. Gutierrez did not file a direct appeal.

Gutierrez filed a timely proper person petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Gutierrez. The State filed a response and a motion to dismiss the petition. Counsel for Gutierrez filed an opposition to the State's motion and a supplemental petition. Thereafter, the district court held an evidentiary hearing and denied Gutierrez's habeas petition. This appeal followed.

On appeal, we ordered a limited remand and instructed the district court to set forth specific findings of fact and conclusions of law in an amended written order resolving Gutierrez's petition and supplemental

petition. The district court has since entered an amended order denying Gutierrez's habeas petition.

First, Gutierrez contends that the district court erred by concluding that he did not ask defense counsel to file an appeal on his behalf. The district court implicitly found defense counsel's testimony to be more credible and determined that Gutierrez did not request an appeal. We conclude that Gutierrez has failed to show that the district court reached the wrong conclusion. See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogated on other grounds as recognized by Harte v. State, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000).

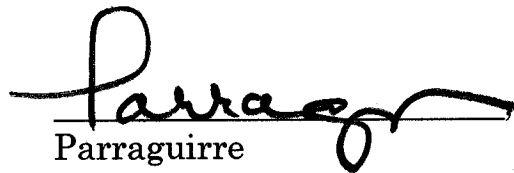
Second, Gutierrez contends that he entered his guilty plea involuntarily because there was confusion over the possible sentence for one of the counts, and there was no written plea memorandum at the time he entered his guilty plea. The district court found that the penalties in the written plea memorandum were consistent with the penalties discussed during the arraignment, Gutierrez was not prejudiced by the failure to file the written plea agreement prior to his arraignment, and Gutierrez entered his plea knowingly and voluntarily. We conclude that Gutierrez has not overcome the presumption that the district court correctly assessed the validity of his plea. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

Third, Gutierrez contends that the district court abused its discretion by not allowing an evidentiary hearing on his claims that defense counsel was ineffective for failing to investigate and prepare a defense, withholding material impeachment information, and not presenting any defenses or impeachment information at his arraignment and sentencing. Because Gutierrez failed to support "his claims with

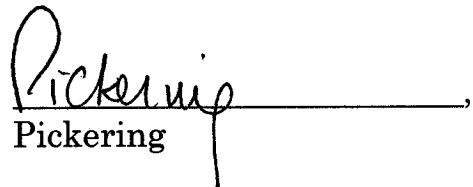
specific factual allegations that if true would entitle him to relief," the district court did not abuse its discretion by declining to hold an evidentiary hearing on these claims. Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

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

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. John P. Davis, District Judge
Stephen B. Rye
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Nye County Clerk