

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCISO PALACIOS A/K/A NARCISCO
PALACIOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52309

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 denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

On February 10, 2006, the district court convicted appellant, pursuant to a guilty plea, of two counts of lewdness with a child under the age of 14. The district court sentenced appellant to serve two terms of life with the possibility of parole after 10 years in the Nevada State Prison. No direct appeal was taken.

On November 13, 2006, 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 February 1, 2007, the district court denied appellant's petition. On appeal, this court affirmed in part, reversed in part and remanded the matter back to the district court to hold an evidentiary hearing on an appeal deprivation claim. On remand, the district court appointed counsel to represent appellant and conducted

an evidentiary hearing. On August 19, 2008, the district court denied appellant's post-conviction petition for a writ of habeas corpus. This appeal followed.

On appeal, appellant claims that the district court erred in denying his claim that he was deprived of his right to appeal. Specifically, appellant claims that trial counsel was ineffective for failing to inform appellant of his right to appeal and failing to file a timely notice of appeal. Appellant further claims that this court should have determined whether appellant was deprived of his right to an appeal rather than remanding the matter back to the district court for an evidentiary hearing.

Appellant's claims are without merit. There is no constitutional requirement that counsel must inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists "a direct appeal claim that has a reasonable likelihood of success." See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal." Davis, 115 Nev. at 20, 974 P.2d at 660. Further, a district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. 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).

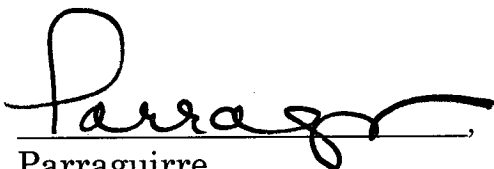
Based upon our review of the documents before this court, we conclude that appellant failed to demonstrate that he was deprived of a direct appeal due to the ineffective assistance of counsel. At the evidentiary hearing, trial counsel testified that she explained the limited

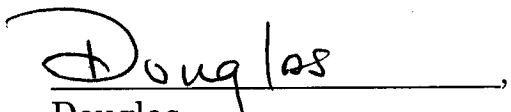
right to appeal to appellant with the aid of an interpreter, and that he never requested an appeal. Trial counsel also testified that it is her practice to make notes in the file if a defendant requests her to file an appeal and that she did not make that note in her file for appellant. In fact, appellant stated at the evidentiary hearing that he never requested an appeal. Substantial evidence supports the district court's determination that appellant was not deprived of a direct appeal. Therefore, we conclude that the district court did not err in denying this claim.

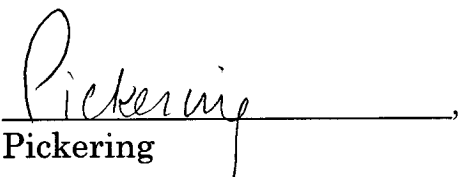
Appellant's second claim, that this court should decide whether a petitioner has been deprived of a direct appeal is patently without merit. In order to determine whether a petitioner has been deprived of a direct appeal requires fact finding, and this court is not a fact finding court.

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. 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: Hon. Valerie Adair, District Judge
Law Office of Betsy Allen
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk