

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM R. ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52474

FILED

APR 21 2009

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

ORDER OF AFFIRMANCE

This is a proper person 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; Michael Villani, Judge.

On March 16, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve two consecutive terms of 48 to 120 months in the Nevada State Prison. Appellant did not file a direct appeal.

On February 28, 2008, 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, the district court declined to appoint counsel, but conducted a limited evidentiary hearing on appellant's appeal deprivation claim. On October 15, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance

was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one. Strickland v. Washington, 466 U.S. 668, 697 (1984). A petitioner must prove the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence, and the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. 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).

First, appellant claimed that he was deprived of a direct appeal due to the ineffective assistance of trial counsel. Specifically, appellant claimed that he asked trial counsel to file an appeal, but that trial counsel failed to file an appeal on his behalf.

This court has held that if a defendant expresses a desire to appeal, counsel is obligated to file a notice of appeal on the defendant's behalf. See Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003); Thomas v. State, 115 Nev. 148, 150-51, 979 P.2d 222, 223-24 (1999); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000). Prejudice is presumed where a defendant expresses a desire to appeal and counsel fails to do so. Mann v. State, 118 Nev. 351, 353-54, 46 P.3d 1228, 1229-30 (2002).

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate by a preponderance of the evidence that his trial counsel was deficient for failing to file a notice of appeal on his behalf. At the evidentiary hearing, appellant's trial counsel testified that he was not asked to file an appeal and that he did not believe there were any non-frivolous issues to raise in an appeal. In addition, it was shown that on March 16, 2007, appellant sent a letter to the public defender's office requesting an appeal in this case and in another case where he was represented by the public defender. Appellant's trial counsel in this case was private counsel and was not associated with the public defender. Accordingly, appellant's trial counsel was not deficient for failing to file the notice of appeal because he was never informed that that appellant wanted to appeal. Therefore, we conclude that the district court did not err in denying this claim.

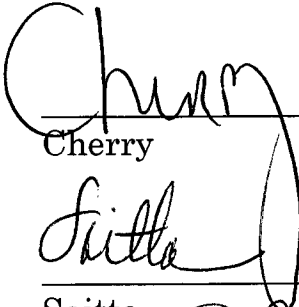
Appellant also claimed that counsel was ineffective for failing to file a motion to suppress his statements to the police, based on a failure to give Miranda warnings, which ultimately caused him to involuntarily plead guilty.¹ Miranda v. Arizona, 384 U.S. 436 (1966). Appellant has failed to demonstrate that trial counsel was deficient or that he was prejudiced. Appellant failed to demonstrate that a motion to suppress would have been successful. According to the police reports, appellant's interview with the police was recorded and he was given his Miranda

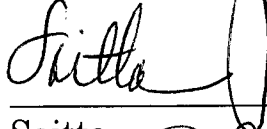
¹To the extent that appellant is challenging the voluntariness of his guilty plea based on trial counsel's failure to file a motion to suppress his statements, we conclude that this claim lacks merit. As stated above, the record indicates that a motion to suppress would have been unsuccessful, and therefore, would not have affected the voluntariness of his plea.

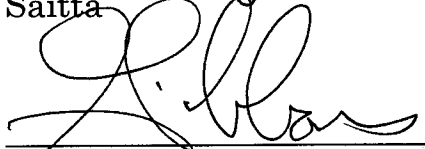
warnings prior to making any statements. Therefore, the district court did not err in denying this claim.

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


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
William R. Adams
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk