

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL JOSEPH JARVIS A/K/A
DANNY JOSEPH JARVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53037

DANIEL JOSEPH JARVIS A/K/A
DANNY JOSEPH JARVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53059

FILED

AUG 10 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are appeals from two separate judgments of conviction. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. We elect to consolidate these appeals for disposition purposes only. NRAP 3(b).

Pursuant to guilty pleas in two different cases, the district court convicted appellant Daniel Joseph Jarvis of one count of uttering forged instruments and one count of attempted forgery. The district court sentenced Jarvis to serve a prison term of 12 to 30 months for each count. The district court imposed the sentences to run consecutively to each other and to Jarvis' sentence in another case.

The sentencing transcript reveals that immediately after the sentence was announced the district court, defense counsel, and Jarvis

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discussed the limited grounds for a direct appeal from a judgment of conviction entered pursuant to a guilty plea. During this discussion, Jarvis moved to withdraw his guilty pleas, but did not provide a reason for the motion. These appeals followed. In the Fast Track Statements, counsel presents two issues for our review.

First, “Appellant challenges the validity of his guilty pleas.” Counsel does not indicate why the guilty pleas are invalid; instead, he argues that this claim is not appropriate for review on direct appeal. “Generally, we will not review a plea-validity challenge that is raised for the first time on appeal. There are exceptions to this rule in cases where: (1) the error clearly appears from the record; or (2) the challenge rests on legal rather than factual allegations.” O’Guinn v. State, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002) (footnotes omitted). As counsel has not alleged that either of these exceptions applies, we decline to consider this contention on direct appeal.

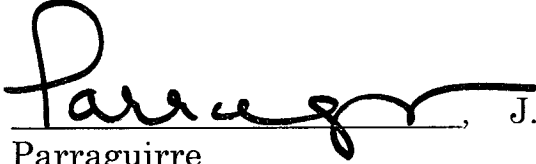
Second, “Appellant alleges that defense counsel was ineffective.” Counsel does not indicate why defense counsel was ineffective; instead, he argues that this claim must be raised in a petition for a writ of habeas corpus. “This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless.” Archanian v. State, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). As counsel has not alleged that either of these exceptions applies, we decline to consider this contention on direct appeal.


We remind counsel that “[a]ttorneys must argue for their clients without conceding an appeal is without merit. An action is not

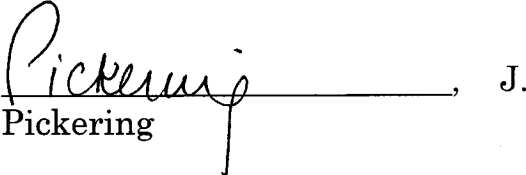
frivolous even though the lawyer believes that the client's position will ultimately not prevail." Ramos v. State, 113 Nev. 1081, 1084-85, 944 P.2d 856, 858 (1997). "[C]ounsel should file a brief that includes all arguable issues and argues defendant's appeal as well as possible." Id. at 1084, 944 P.2d at 857. We note that Franklin v. State provides an illustrative list of claims that may be raised on a direct appeal from a judgment of conviction entered pursuant to a guilty plea. 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994), disapproved of on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Having concluded that the claims raised in Jarvis' Fast Track Statements are not appropriate for direct appeal, we

ORDER the judgments of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

cc: Hon. Robert W. Lane, District Judge
Gibson & Kuehn
Attorney General Catherine Cortez Masto/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Nye County Clerk