

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN M. SCRUGGS,

No. 34803

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 11 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying appellant's post-conviction petition for a writ of habeas corpus.

On February 10, 1998, the district court convicted appellant, pursuant to a nolo contendere plea,¹ of attempted murder. The district court sentenced appellant to serve 96 to 240 months in the Nevada State Prison. Appellant did not pursue a direct appeal.

On February 3, 1999, 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 April 12, 1999, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that the district court denied him his right to a direct appeal and assistance of counsel on appeal by informing him that he waived his right to appeal by pleading nolo contendere, and that trial counsel provided ineffective assistance by failing to file a direct appeal. We conclude that both contentions lack merit.

The written plea agreement informed appellant that as a result of his plea, he waived the right to appeal "unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

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challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035." This language is taken from NRS 177.015(4). In Davis v. State,² we held that this language does not constitute an unequivocal waiver of the right to appeal. Rather, "[q]uoting the statutory language in a plea agreement merely informs the defendant of the limitations of a potential appeal; it alerts the defendant who pleads guilty to the permissible scope of his appeal as a matter of law."³ Thus, the State did not bargain for appellant's unequivocal waiver of his right to appeal in this case.

During the oral plea canvass, the district court addressed appellant's right to appeal in two instances. In the first instance, the district court listed the right to appeal with the assistance of counsel among the constitutional rights that appellant was waiving by entering the nolo contendere plea. Although this part of the plea canvass, standing alone, might have created a conflict in the record that would warrant an evidentiary hearing on the claims in appellant's petition, the canvass did not end there. Shortly after indicating that appellant had waived his right to appeal, the district court clarified that statement by informing appellant that he actually had a limited right to appeal the judgment of conviction:

THE COURT: Did your lawyer inform you that you still retain the right to appeal the entry of this guilty plea; that is, you can appeal the entry of this guilty plea, as well as these proceedings, on a number of grounds.

Do you understand that?

THE DEFENDANT: I understand, your Honor, Yes.

It is therefore clear from the record that appellant understood his limited right to appeal the judgment of conviction. Because appellant's claims that the district court denied him his right to appeal and his right to the assistance of counsel on appeal are belied by the record, we conclude that the district court did not err in denying those claims without conducting an evidentiary hearing.⁴

²115 Nev. 17, 19, 974 P.2d 658, 659 (1999).

³Id.

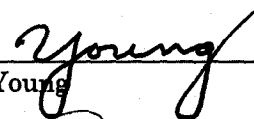
⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

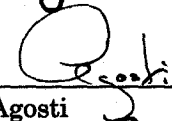
Appellant's ineffective assistance claim similarly lacks merit. The statutory language in the plea agreement and the district court's admonishment during the plea canvass were sufficient to inform appellant of his right to appeal.⁵ Moreover, we held in Davis that an attorney is not obligated to file a notice of appeal unless the client expresses a desire to appeal.⁶ Like the petitioner in Davis, appellant has not alleged that he asked counsel to file an appeal and that counsel failed to do so. Under the circumstances, we conclude that appellant cannot demonstrate that trial counsel provided ineffective assistance in this respect.⁷


Appellant also implied in his petition that his nolo contendere plea was invalid because he had negotiated and signed a plea agreement providing for a sentence of 4 to 14 years in prison, and that the district court failed to honor that agreement. This claim is belied by the record. The written plea agreement provided that the State was free to argue at sentencing and informed appellant that he faced a possible sentence of 2 to 20 years and that sentencing was entirely within the district court's discretion. During the plea canvass, appellant acknowledged the negotiations and his understanding of the sentencing range and the district court's sentencing discretion. Based on the foregoing, we conclude that appellant's claim that the plea was invalid lacks merit.

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.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁵See Davis, 115 Nev. at 19, 974 P.2d at 659.

⁶Id. at 20, 974 P.2d at 660.

⁷See id.; see also Strickland v. Washington, 466 U.S. 668 (1984).

⁸See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Jack Lehman, District Judge
Attorney General
Clark County District Attorney
Glenn M. Scruggs
Clark County Clerk