

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOUSTON POWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53103

FILED

AUG 10 2009

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
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; Stewart L. Bell, Judge.

On February 1, 2008, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant to serve a term of 96 to 240 months in the Nevada State Prison. No direct appeal was taken.

On October 17, 2008, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Appellant filed a reply. 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 January 28, 2009, the district court denied appellant's petition. This appeal followed.

In his petition, appellant claimed that his trial counsel failed to inform him of the right to a direct appeal and file a notice of appeal on his behalf.

Appellant failed to demonstrate that his trial counsel was ineffective in this regard. The record on appeal reveals that appellant was


advised of his limited right to appeal in the written guilty plea agreement. Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999) (recognizing that language in the standard plea agreement informs a defendant of the limited right to appeal a judgment of conviction based upon a guilty plea). Specifically, appellant was advised that by entry of his plea he waived his "right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035." Moreover, 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, 115 Nev. at 20, 974 P.2d at 660. Appellant did not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, we conclude that the district court did not err in denying this claim.

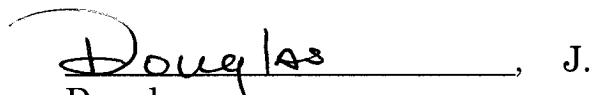
Next, appellant claimed that his habitual criminal adjudication was improper in violation of his due process rights. Appellant claimed that the district court failed to conduct a hearing to determine if the prior felony convictions were constitutionally valid and the State failed to present prima facie evidence of the prior convictions. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction

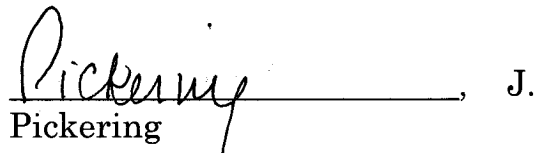
based on a guilty plea. NRS 34.810(1)(a). Therefore, we conclude that the district court did not err in denying this claim.

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.

  
Parraguirre

  
Douglas

  
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge  
Houston Powell  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk