

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES J. TURNER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54518

FILED

SEP 10 2010

TRACIE 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.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

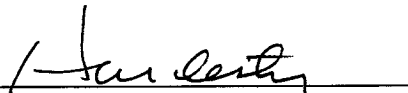
In his petition filed on August 1, 2005, appellant claimed that his counsel was ineffective for failing to file a direct appeal.² Appellant failed to demonstrate that counsel was obligated to file a notice of appeal because appellant failed to demonstrate that he expressed a desire to appeal. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999). At the

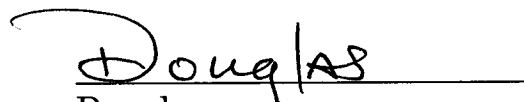
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²Appellant's additional claims from the August 1, 2005, petition have already been considered and rejected by this court. Turner v. State, Docket No. 51706 (Order Affirming in Part, Reversing in Part and Remanding, May 5, 2009). This court remanded for an evidentiary hearing solely on appellant's appeal-deprivation claim.

evidentiary hearing, counsel testified that she explained to appellant his appeal rights, but appellant never notified her that he wished to appeal the judgment of conviction. The district court determined that appellant had not expressed a desire to appeal following the entry of his guilty plea, and that conclusion is supported by substantial evidence. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Appellant failed to prove his claim by a preponderance of the evidence and, therefore, appellant failed to demonstrate that he was entitled to relief. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
James J. Turner, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk