

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY LEMAY, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54790

FILED

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Anderson*  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

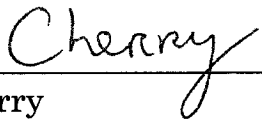
In his petition filed on May 11, 2009, appellant claimed that he requested his trial counsel file a direct appeal, but that trial counsel failed to do so. In support of his claim, appellant presented a copy of a letter he claimed to have sent to counsel and an affidavit from his mother. At the evidentiary hearing, appellant's former trial counsel testified that he did not remember being asked to file an appeal, that he did not remember a conversation with appellant's mother about an appeal, that he did not receive the letter purportedly sent by appellant, and that he would have started the appellate process for appellant if he had been asked. While appellant testified that he did ask for an appeal and that he sent a


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<sup>1</sup>This 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).

letter, the district court found appellant's former trial counsel's testimony more credible. Substantial evidence supports the district court's finding that appellant did not request a direct appeal. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Appellant failed to demonstrate that counsel otherwise had a duty to file a direct appeal. See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Valerie Adair, District Judge  
Larry Lemay Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk