

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN MICHAEL THOMAS,  
Appellant,  
vs.  
WARDEN, SOUTHERN DESERT  
CORRECTIONAL CENTER, BRIAN  
WILLIAMS AND THE STATE OF  
NEVADA,  
Respondents.

No. 55307

**FILED**

JUL 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Shawn Michael Thomas's timely post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Thomas contends that the district court erred by dismissing his claim that appellate counsel was ineffective for failing to challenge the State's breach of the plea agreement on direct appeal. To prove a claim of ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel was deficient for failing to raise an issue for review and the omitted issue had a reasonable probability of success on appeal. Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). "An attorney's decision not to raise meritless issues on appeal is not ineffective assistance of counsel." Id. Although the district court's order does not specifically address the ineffective assistance of appellate counsel claim, we conclude that Thomas has not demonstrated that appellate counsel was ineffective or that the district court erred by dismissing his habeas petition. The

record on appeal reveals that the State followed the terms of the guilty plea agreement, argued facts in favor of its recommended sentence, and did not explicitly or implicitly seek a harsher sentence than that provided for in the parties' agreement. See Sullivan v. State, 115 Nev. 383, 389, 990 P.2d 1258, 1262 (1999) (a promise to recommend a sentence does not "restrict the state's right to argue or present facts in favor of the sentence recommendation"). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Janet J. Berry, District Judge  
Merchant Law Firm, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk