

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFEREY RAY GLOVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55316

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant argues that the district court erred in denying his claim that he was deprived of a direct appeal when trial counsel failed to file an appeal despite being asked to do so.

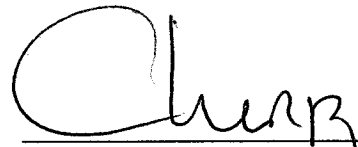
Based upon our review of the record on appeal, we conclude that the district court did not err in denying this claim because appellant failed to demonstrate by a preponderance of the evidence that he asked counsel to file an appeal in the instant case.¹ See Means v. State, 120

¹At the evidentiary hearing, appellant's post-conviction counsel attempted to expand the appeal deprivation claim to include trial counsel's failure to inform appellant of the right to appeal. The district court rejected this expansion. To the extent that appellant presents this expanded claim on appeal, we conclude that the district court did not abuse its discretion in refusing permission to expand the claim. See Barnhart v. State, 122 Nev. 301, 303-04, 130 P.3d 650, 651-52 (2006).


Moreover, as a separate and independent ground to deny relief, we conclude that the claim lacked merit as the expanded claim was based on a faulty premise. As this court has held, in a conviction involving a guilty
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Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003); Thomas, 115 Nev. at 150, 979 P.2d at 223; Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 659-60 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470, 479-80 (2000). At the evidentiary hearing, appellant's former trial counsel testified that appellant did not ask him to file an appeal and that he did not have any communication with appellant after the sentencing hearing. The district court found trial counsel's testimony to be credible, and substantial evidence supports this determination. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). Accordingly, we


ORDER the judgment of the district court AFFIRMED.

 _____, J.

Cherry

 _____, J.

Saitta

 _____, J.

Gibbons

... continued

plea, trial counsel does not have a duty to inform the client of the right to appeal absent certain circumstances, which include a request for an appeal or the presence of a meritorious appeal issue. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999). Appellant fails to demonstrate that either of these circumstances existed in this case.

cc: Hon. Robert W. Lane, District Judge
Nye Co. Clerk
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney/Pahrump