

IN THE SUPREME COURT OF THE STATE OF NEVADA

CESAR CARRILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56287

FILED

MAR 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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; Michelle Leavitt, Judge.

In his petition filed on March 30, 2009, appellant claimed that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505

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).

(1984) (adopting the test in Strickland). Both components of the inquiry must be shown. Strickland, 466 U.S. at 697.

First, appellant claimed that his trial counsel coerced and tricked him into entering a guilty plea that required him to stipulate to habitual criminal treatment if he failed to appear for sentencing or before the Department of Parole and Probation for preparation of the presentence investigation report. Appellant failed to demonstrate that his trial counsel's performance was deficient. Appellant was thoroughly canvassed about the terms of the negotiations. During the plea canvass, appellant acknowledged that his guilty plea was not the product of any threats. Therefore, we conclude that the district court did not err in denying this claim.²


Next, appellant claimed that his trial counsel failed to inform him of the right to appeal. Appellant failed to demonstrate that his counsel's performance was deficient. Appellant was informed 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). Further, there is no constitutional requirement that counsel must always inform a 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. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S.

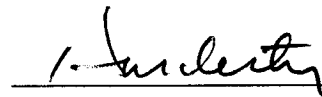
²To the extent that appellant claimed that his trial counsel knew that appellant would breach the terms of the plea agreement, the record offers no proof of this assertion. Notably, whether appellant breached the plea agreement by failing to show for the sentencing hearing was a circumstance uniquely in appellant's control.

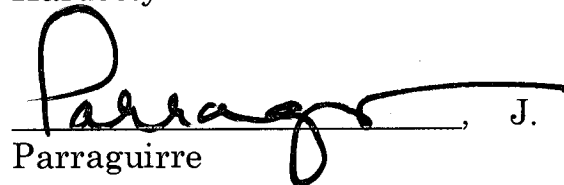
470 (2000). Appellant did not allege that he asked counsel to file a direct appeal and failed to demonstrate that there existed a direct appeal claim that had a reasonable likelihood of success. Therefore, we conclude that the district court did not err in denying this claim.

Finally, appellant claimed: (1) the district court adjudicated appellant a habitual criminal without presentation of the prior convictions and without making a just and proper determination, and (2) appellant's stipulation to habitual criminal status was improper. These claims were 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 these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Cesar Carrillo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk