

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARVIEZ ALEXANDER,

No. 35153

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

APR 12 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus.

On January 4, 1995, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping with the use of a deadly weapon and four counts of robbery with the use of a deadly weapon. The district court sentenced appellant to serve terms totaling two hundred ten years in the Nevada State Prison. This court dismissed appellant's appeal from his judgment of conviction. *Alexander v. State*, Docket No. 26624 (Order Dismissing Appeal, October 22, 1996).

On May 30, 1996, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The state opposed appellant's petition. On July 29, 1997, without appointing counsel or conducting an evidentiary hearing, the district court denied appellant's petition. Appellant appealed that decision.

On appeal, this court concluded that the majority of appellant's claims in his post-conviction petition lacked merit. However, this court could not determine from the existing record whether appellant's claim that trial counsel misinformed him about his ability to withdraw his plea was credible.<sup>1</sup> Moreover,

<sup>1</sup>Specifically, appellant contended that his counsel told him that if he entered a guilty plea pursuant to negotiations that he could later freely withdraw his plea if he decided not to go through with the negotiations. Appellant contended that his counsel did not inform him that it was within the district court's discretion to grant or deny a motion to withdraw a guilty plea.

the record did not belie this claim. Accordingly, this court remanded the case to the district court to conduct an evidentiary hearing on the sole issue of whether appellant's trial counsel misinformed him about his ability to withdraw his plea. Alexander v. State, Docket No. 29134 (Order of Remand, March 11, 1999).

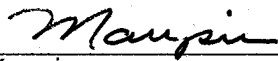
The district court appointed counsel to represent appellant and conducted an evidentiary hearing on June 11, 1999 and June 28, 1999. The district court entered a document entitled "Findings Regarding Evidentiary Hearings" on August 12, 1999. Therein, the court set forth various factual findings and indicated its belief that appellant's claim lacked merit, but failed to make any legal conclusions or enter a final order resolving the claim. This court subsequently received the district court's findings and a proper person document challenging the findings. This court explained that its earlier remand of the matter to the district court was the final disposition of the appeal in Docket No. 29134 and clarified that the district court was to formally and finally resolve the post-conviction petition. Alexander v. State, Docket No. 29134 (Order, October 14, 1999).

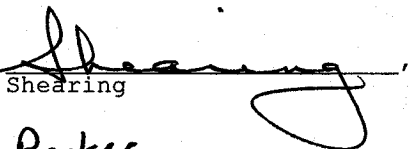
In response to this court's order, the district court entered its "Final Order From Evidentiary Hearing Re: Withdrawal of Guilty Plea" on October 22, 1999. The court found that trial counsel never represented to appellant that any motion to withdraw his guilty plea would automatically be granted by the court. The court further found that appellant's claims that he entered a guilty plea as a ploy to get his trial date continued and that trial counsel misinformed him regarding his ability to withdraw his plea lacked merit. The court therefore denied that portion of appellant's post-conviction petition alleging that he was misinformed about his ability to withdraw his guilty plea. This appeal followed.


Appellant contends that the district court erred by denying his post-conviction petition and refusing to permit appellant to withdraw his plea. We disagree.

A district court's findings of fact in a post-conviction proceeding are entitled to deference on appeal so long as they are supported by substantial evidence and are not clearly wrong. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We conclude that the district court's findings in this case are supported by substantial evidence and are not clearly wrong. The district court's findings support the conclusion that appellant's claim that he was misinformed about his ability to withdraw his guilty plea lacks merit. We therefore conclude that the district court did not err by denying appellant's post-conviction petition as to that claim.<sup>2</sup> Accordingly, we

ORDER this appeal dismissed.<sup>3</sup>

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Sally L. Loehrer, District Judge  
Attorney General  
Clark County District Attorney  
Walton & Langford  
Clark County Clerk

<sup>2</sup>Appellant also contends that the district court's "failure to enter its written Findings of Fact, Conclusions of Law and Decision for in excess of six (6) months after being ordered to do so by the Supreme Court" caused appellant "further harm" and, therefore, the district court's final order should be "stricken" and "held for naught." Appellant does not specify the harm caused by the alleged delay nor does he cite any relevant authority in support of his contention that the final order should be stricken. Accordingly, we decline to address this contention. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

<sup>3</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.