


IN THE SUPREME COURT OF THE STATE OF NEVADA

MARLON D. COLLINS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56854

**FILED**

**FEB 09 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
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; Doug Smith, Judge.

In his petition filed on April 12, 2010, appellant claimed that he received ineffective assistance of trial counsel.<sup>2</sup> To prove ineffective

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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).

<sup>2</sup>To the extent that appellant raised any claims independent from his claims of ineffective of assistance of counsel, those claims were not cognizable 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). To the extent that appellant sought to modify his sentence, appellant failed to demonstrate that the district court relied on a material

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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 be different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (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 was ineffective at sentencing for failing to object to inadmissible evidence in violation of the Confrontation Clause. Appellant failed to demonstrate that counsel was deficient as the Confrontation Clause does not apply to sentencing hearings. See generally Summers v. State, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Appellant failed to demonstrate that he was prejudiced as he failed to demonstrate by a reasonable probability that he would have received a different sentence had trial counsel objected to the prosecutor's statement. The district court judge made her sentencing decision after presiding over the jury trial prior to declaring a mistrial, listening to the arguments of the parties at sentencing, appellant's statements in

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*... continued*

mistake of fact about his criminal record that worked to his extreme detriment. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).


allocution, and the victim impact statement. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to adequately investigate his case for sentencing purposes. Appellant failed to identify what evidence or testimony a more thorough investigation would have uncovered, and thus, appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Therefore, we conclude that the district court did not err in denying this claim.


Third, appellant claimed that his trial counsel was ineffective for failing to advise him of post-conviction remedies. To the extent that appellant claimed his trial counsel was ineffective for failing to advise him of the right to appeal, appellant failed to demonstrate that his counsel was ineffective. Notably, 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. 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. There is no constitutional requirement that trial counsel inform

appellant of other post-conviction remedies. Therefore, we conclude that the district court did not err in denying his claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

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

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

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Doug Smith, District Judge  
Marlon D. Collins  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.