

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERROD G. BLACKWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58659

FILED

DEC 07 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Angela
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; Abbi Silver, Judge.

In his petition filed on December 27, 2010, appellant claimed that his trial counsel was ineffective for failing 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. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004); Hathaway v. State, 119 Nev. 248, 254, 71 P.3d 503, 507 (2003); Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); 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

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).

evidentiary hearing, trial counsel testified that they did not recall appellant asking for an appeal, but that if he had asked for an appeal that an appeal would have been filed on his behalf. The district court found the testimony of trial counsel to be credible, and substantial evidence supports this determination. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Next, appellant claimed that his sentence was cruel and unusual punishment and that the district court abused its discretion in adjudicating him a habitual criminal. These claims fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Abbi Silver, District Judge
Jerrod G. Blackwell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk