

IN THE SUPREME COURT OF THE STATE OF NEVADA

BLAIN POMPE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35469

FILED

FEB 12 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY Richard
CHIEF DEPUTY CLERK

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

On May 28, 1996, Pompe was convicted, pursuant to a guilty plea, of one count of sexual assault. The district court sentenced Pompe to serve a term of life in prison with the possibility of parole after 10 years. The district court ordered Pompe to pay restitution in the amount of \$1,246.89, and gave him credit for 350 days time served. Pompe did not pursue a direct appeal.

On May 22, 1997, Pompe filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State moved to dismiss the petition, and Pompe filed an opposition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to

represent Pompe or to conduct an evidentiary hearing. On August 15, 1997, the district court dismissed Pompe's petition, and he appealed to this court.

In the petition filed in the district court, Pompe contended that his plea was involuntary because he was not adequately advised about the sentencing consequences of his plea, including the fact that probation was not an available sentencing option for sexual assault. Our review of the record on appeal revealed that not only was Pompe not advised that probation was unavailable, but that he was misadvised that probation was available under certain circumstances. Therefore, because Pompe may have raised a claim of merit, we ordered the State to respond.¹ After considering the State's response, this court remanded the matter to the district court for the limited purpose of conducting an evidentiary hearing to determine whether Pompe was aware that probation was not a sentencing option for his offense; we also concluded that Pompe's other assignments of error were without merit.²

¹See Pompe v. State, Docket No. 30981 (Order to Respond, September 14, 1999).

²See Pompe v. State, Docket No. 30981 (Order of Remand, October 28, 1999).

On December 15, 1999, an evidentiary hearing was conducted in the district court. The district court found that Pompe's guilty plea was knowing and voluntary, and that he knew before he entered his guilty plea that probation was not a sentencing option. Pompe now appeals from the denial of his petition.

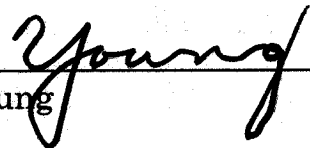
The district court's factual findings are entitled to deference when reviewed on appeal.³ Pompe has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Pompe has not demonstrated that the district court erred as a matter of law.

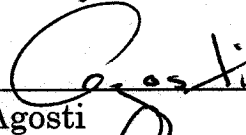
The district court found the testimony of Pompe's former counsel credible, and concluded that counsel fully explained to Pompe prior to the entry of his plea that probation was not a sentencing option. Pompe reviewed the presentence investigation report prepared by the Division of Parole and Probation which indicated that probation was not available, and his own statements attached to the report indicated that he clearly understood that he would be incarcerated. Therefore, we conclude

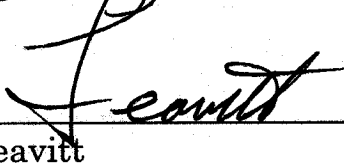
³See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

that the district court properly denied Pompe's petition, and that briefing and oral argument are not warranted in this case.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁵This court received a proper person motion from Pompe on January 10, 2002, requesting that he be provided with the transcript of the evidentiary hearing conducted on December 15, 1999. Previously, on November 19, 2001, this court ordered the clerk of the district court to transmit to this court the same transcript as a supplemental record on appeal, which we eventually received and filed on January 24, 2002. Inexplicably, the clerk of the district court also delivered a copy of the transcript to the Public Defender's Office rather than to Pompe. We have considered the proper person motions received in this matter, and conclude that Pompe is not entitled to the relief requested; any request for the production of documents must be made by motion in the district court.

cc: **Hon. Brent T. Adams, District Judge**
Attorney General/Carson City
Washoe County District Attorney
Blain Pompe
Washoe District Court Clerk