

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL RONALD STENNER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35483

FILED

JUN 12 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ribick*
CHIEF 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.

In two separate cases, appellant was convicted, pursuant to jury verdicts, of dissuading a witness and sexual assault. Appellant did not pursue a direct appeal in either case. However, appellant subsequently filed a timely post-conviction petition for a writ of habeas corpus in each case, alleging that he was deprived of his right to appeal because his attorneys either failed to advise him of the right to appeal or because they ignored his explicit instructions to appeal. The district court consolidated the petitions, appointed counsel to represent appellant, and conducted an evidentiary hearing. Thereafter, the court denied the petition.

Appellant contends that the district court erred in rejecting his claims of ineffective assistance of counsel. We disagree.

A claim of ineffective assistance of counsel presents a mixed question of law and fact and is therefore subject to independent review. See State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). However, a district court's factual findings regarding a claim of ineffective assistance are entitled to deference 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).

Where, as here, a defendant has been convicted pursuant to a jury verdict, a lawyer has a duty to inform his client of the right to appeal. See Lozada v. State, 110 Nev. 349, 356, 871 P.2d 944, 948 (1994); cf. Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999) ("We hold that there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal."). Moreover, a lawyer also has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction. See Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999). "The burden is on the client to indicate to his attorney that he wishes to pursue an appeal." Id. Accordingly, an attorney "is not obliged to obtain consent not

to file the appeal where the client does not express a desire to challenge the proceedings." Id.

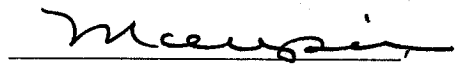
After hearing testimony from appellant and his attorneys, the district court found the attorneys' testimony to be credible. The court specifically found that appellant was informed of his right to appeal in both cases, that in one case appellant expressly informed his counsel that he did not wish to appeal the conviction, and that in the other case appellant "did not express any interest in appealing until well after the time to appeal had passed."¹

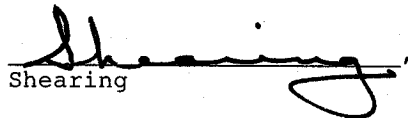
Appellant has not alleged that the district court's findings are unsupported by the record or clearly wrong. He simply argues that the "more persuasive evidence" at the hearing established that he was not advised of his right to appeal because appellant could not recall being so advised. However, as the trier of fact at the post-conviction hearing, it was for the district court to assess the weight of the evidence and determine the credibility of the witnesses. See Brown v. State, 110 Nev. 846, 852, 877 P.2d 1071, 1075 (1994) (noting that judge is trier of fact in post-conviction proceeding). See generally McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (stating general proposition that it is role of trier of fact to assess weight of evidence and

¹The court also found that appellant had been fully informed of the time requirements for filing a notice of appeal and had been instructed to contact counsel within that time period if he wished to pursue an appeal.

determine credibility of witnesses). Accordingly, we give deference to the district court's findings of fact. Because appellant failed to demonstrate that counsel did not inform him of the right to appeal or that counsel ignored appellant's express instructions to file an appeal, we conclude that the district court did not err in denying appellant's petition. We therefore

ORDER this appeal dismissed.


Maupin J.


Shearing J.


Becker J.

cc: Hon. Steven P. Elliott, District Judge
Attorney General
Washoe County District Attorney
Mark L. Sturdivant
Washoe County Clerk