

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ALAN EVANS,

Appellant,

vs.

WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DAVID
MILLIGAN,

Respondent.

No. 35539

FILED

APR 04 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *[Signature]*
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. The district court conducted an evidentiary hearing before denying appellant's petition.

Appellant argues that his trial counsel was ineffective for failing to fully inform him of his right to appeal and for failing to perfect an appeal. This court recently held that "there is no constitutional requirement that counsel must always inform a defendant who pleads guilty of the right to pursue a direct appeal." *Thomas v. State*, 115 Nev. ___, ___, 979 P.2d 222, 223 (1999). Counsel has an obligation to advise a defendant of the right to appeal where: (1) the defendant inquires about an appeal; or (2) a direct appeal claim exists that is reasonably likely to succeed. *Id.* At the evidentiary hearing on the petition, evidence was adduced that demonstrated that appellant inquired about

withdrawing his guilty plea, but did not inquire about appealing. Further, appellant has failed to identify any direct appeal issues that were likely to succeed on appeal. We therefore conclude that the district court correctly concluded that appellant's trial counsel was not ineffective for failing to inform appellant of his right to appeal or for failing to perfect an appeal on behalf of appellant.

Appellant next argues that his counsel was constitutionally ineffective at sentencing because counsel argued for a greater sentence than was agreed to in the plea bargain. The plea agreement stated that appellant would plead guilty to two counts of theft, and "both sides will recommend six (6) years in the Nevada State Prison." At sentencing, counsel for appellant stated that both sides had agreed to recommend six years on each count. However, counsel quickly corrected himself and stated that the parties had agreed to recommend a total of six years, or three years on each count. We conclude that the district court correctly concluded that counsel's misstatement did not render counsel's assistance ineffective.

Finally, appellant argues that counsel was ineffective for failing to appeal based on a breach of the plea agreement by the state.¹ However, our review of the

¹Appellant argues that the state breached the agreement: (1) by arguing for a sentence for each count, rather than one sentence; (2) because the Division of Parole and Probation recommended a sentence greater than the plea agreement; and
continued on next page . . .

record reveals that there was no breach of the plea agreement, and that counsel was therefore not ineffective for failing to appeal this issue.

Based on the foregoing, we conclude that the district court did not err by denying appellant's petition, and we

ORDER this appeal dismissed.

Maupin, J.
Maupin

Shearing, J.
Shearing

Becker, J.
Becker

cc: Hon. Richard A. Wagner, District Judge
Attorney General
Humboldt County District Attorney
State Public Defender
Humboldt County Clerk

... continued

(3) by discussing uncharged offenses at the sentencing hearing.