

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ANTHONY SKINNER,

No. 35619

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

NOV 22 2000

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus.

On April 21, 1993, the district court convicted appellant Paul Anthony Skinner, pursuant to a guilty plea, of sexual assault and robbery and sentenced Skinner to life in prison for the sexual assault and a consecutive five-year term for the robbery. Skinner subsequently pursued habeas relief and, on appeal from the district court's denial of Skinner's post-conviction petition for a writ of habeas corpus, this court concluded that Skinner was entitled to relief because he was not told that probation was not available for sexual assault. See Skinner v. State, 113 Nev. 49, 930 P.2d 748 (1997).

On remand, Skinner withdrew his guilty plea and proceeded to trial before a jury on one count each of sexual assault, attempted sexual assault and robbery. The jury found

this court dismissed for lack of jurisdiction. See Skinner v. State, Docket No. 31061 (Order Dismissing Appeal, November 12, 1997).

On May 29, 1998, Skinner filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Skinner in the post-conviction proceedings, conducted an evidentiary hearing and dismissed the petition. This timely appeal followed.

Skinner contends that the district court erred in dismissing the petition. We disagree.

In his petition, Skinner claimed that trial counsel deprived him of his right to a direct appeal by failing to file a notice of appeal after Skinner requested that he do so. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). In his supplement to the petition, Skinner alleged that: (1) the State adduced insufficient evidence to support the conviction for attempted sexual assault; (2) a witness's reference at trial to Skinner's prior sexual assault conviction was so prejudicial that it could not be cured by the district court's admonition to the jury; and (3) the district court abused its discretion in admitting hearsay testimony under the excited utterance exception to the hearsay rule.

The claims raised in the supplement to the petition could have been raised in a direct appeal from the judgment of conviction. Thus, Skinner had to plead and prove specific facts demonstrating (1) good cause for his failure to present these claims in a direct appeal, and (2) actual prejudice.

valid claim of ineffective assistance of counsel may establish good cause).

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). Moreover, "[o]n matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion." Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

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.

at the time of sentencing he informed Skinner that he had the right to file an appeal and that the notice of appeal had to be filed within 30 days of the conviction. Bell further testified that he explained to Skinner that he would not handle a direct appeal, but that the public defender's office would represent Skinner if he wanted to pursue an appeal and that Skinner would need to file a notice of appeal and contact the public defender's office.¹ Bell also testified that Skinner never indicated to Bell that he wanted to pursue a direct appeal. According to Bell, Skinner sent him a letter about two weeks after the sentencing hearing thanking Bell for his work; Skinner did not mention an appeal in that letter.


Skinner testified that after sentencing he told Bell that he wanted to pursue an appeal and that Bell "really didn't say nothing." Skinner further testified that Bell never informed him that he had to file a notice of appeal within 30 days of the conviction. Skinner also testified that he never received the form letter described by Bell. Skinner explained that he learned of the 30-day appeal period from a jailhouse lawyer after the 30-day appeal period had expired. He then filed a notice of appeal.


The district court found that Bell's testimony was credible and that Skinner's contrary testimony was not credible. The district court therefore found that Skinner was informed of his appellate rights and that he did not express a desire to appeal. As a result, the district court concluded

that Skinner had not demonstrated that he was deprived of his right to a direct appeal due to ineffective assistance of counsel.

Based on our review of the record, we conclude that the district court did not err in dismissing the petition. Skinner has not demonstrated that the district court's factual findings are not supported by the record or are clearly wrong. Because Skinner failed to demonstrate that counsel did not inform him of the right to appeal or that counsel ignored Skinner's express instructions to file an appeal, we conclude that the district court did not err in concluding that Skinner failed to demonstrate that he was deprived of the right to a direct appeal due to ineffective assistance of counsel. Accordingly, Skinner also failed to demonstrate good cause to overcome the procedural bar set forth in NRS 34.810(1)(b). We therefore affirm the district court's order dismissing appellant's petition.

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Young


_____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney