

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN S. FAILE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35694

**FILED**

APR 04 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On May 2, 1989, the district court convicted appellant of one count of assault with the use of a deadly weapon. The district court sentenced appellant to 6 years in the Nevada State Prison, to be run consecutively to a 15 year sentence in another district court case. No direct appeal was filed.

On June 8, 1989, appellant filed in the district court a petition for post-conviction relief. The district court denied the petition. This court dismissed appellant's appeal as abandoned.<sup>1</sup>

<sup>1</sup>Faile v. State, Docket No. 21027 (Order Dismissing Appeal, June 27, 1990).

On September 13, 1995, appellant filed in the district court a post-conviction petition for writ of habeas corpus. Appellant claimed he was denied a direct appeal without his consent. On October 10, 1995, the district court denied appellant's petition on the ground of laches. Appellant appealed, and this court concluded that appellant was denied a direct appeal without his consent and remanded to the district court to appoint counsel to brief appellant's direct appeal issues in a petition for writ of habeas corpus.<sup>2</sup>

Counsel was appointed, and on January 14, 2000, appellant filed in the district court a Lozada petition for a writ of habeas corpus purporting to raise appellant's direct appeal issues, pursuant to this court's May 18, 1999 order. On February 28, 2000, the district court denied appellant's petition. This appeal follows.

The issues raised by appellant as "direct appeal" issues challenged the validity of the guilty plea. This court does not "permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction."<sup>3</sup> Challenges to the validity of a guilty plea must be raised in the district court in the first instance by

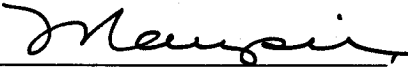
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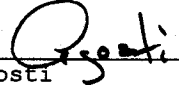
<sup>2</sup>Faile v. State, Docket No. 27752 (Order of Remand, May 18, 1999); see also Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994).

<sup>3</sup>Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

commencing a post-conviction proceeding under NRS chapter 34 or by bringing a motion to withdraw the guilty plea.<sup>4</sup> We therefore conclude that appellant failed to raise any issues cognizable on direct appeal from a judgment of conviction. Accordingly, we conclude that the district court did not err in denying the petition, and

ORDER the judgment of the district court AFFIRMED.<sup>5</sup>

  
\_\_\_\_\_, C.J.  
Maupin

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Rose

cc: Hon. John S. McGroarty, District Judge  
Attorney General  
Clark County District Attorney  
Gregory L. Denué  
Clark County Clerk

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<sup>4</sup>See Bryant, 102 Nev. at 272, 721 P.2d at 368.

<sup>5</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.