

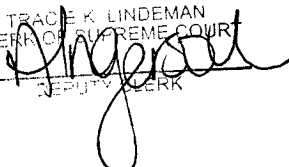
IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH GUICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62521

FILED

JAN 16 2014

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition filed on September 24, 2012, appellant claimed that his counsel was ineffective during probation revocation proceedings by failing to challenge the revocation and by failing to file a notice of appeal.

Appellant failed to demonstrate that he was entitled to the effective assistance of counsel at the revocation hearing. This court has recognized that an ineffective-assistance-of-counsel claim will lie only where the defendant has a constitutional or statutory right to the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. *See Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

appointment of counsel. *See McKague v. Warden*, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). There is no absolute right to counsel at a probation revocation hearing. *Gagnon v. Scarpelli*, 411 U.S. 778, 790 (1973). The need for counsel at a probation revocation proceeding is made on a case-by-case basis. *Id.*; *see also Fairchild v. Warden*, 89 Nev. 524, 525, 516 P.2d 106, 107 (1973) (adopting the approach set forth in *Gagnon*). Counsel is required if the probationer makes a colorable claim (1) that he did not commit the alleged violations or (2) that there are justifying or mitigating circumstances which make revocation inappropriate and these circumstances are difficult or complex to develop or present. *Gagnon*, 411 U.S. at 790. Therefore, appellant must demonstrate that he had a right to counsel at his probation revocation hearing before he can assert a claim of ineffective assistance of counsel at that proceeding.

At the probation revocation hearing, appellant did not argue that he did not commit the alleged violation and did not attempt to argue there were mitigating circumstances which made revocation inappropriate. Rather, appellant personally informed the district court that he stipulated to the revocation of his probation in exchange for a modification of his sentence. Under these circumstances, appellant failed to demonstrate he had the right to counsel for the probation revocation proceedings. As appellant failed to demonstrate he had a right to counsel, he did not demonstrate that he would be entitled to relief based upon a claim of ineffective assistance of counsel at the probation revocation proceedings. *See McKague*, 112 Nev. at 164-65, 912 P.2d at 258.

Therefore, the district court did not err in denying the petition.
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Valerie Adair, District Judge
Kenneth Guice
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk