

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN FAGOAGA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 35832

FILED

JUL 28 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.

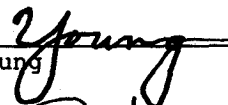
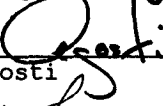

Appellant was originally convicted, pursuant to a jury verdict, of one count of felony driving under the influence. The district court sentenced appellant to serve 18-48 months in the Nevada State Prison. Appellant did not appeal from his judgment of conviction.

Appellant subsequently filed a post-conviction petition for a writ of habeas corpus, which was dismissed by the district court without a hearing. Appellant filed a timely appeal from the district court's order, and this court entered an order holding that three of appellant's four claims lacked merit. As to the final issue, that trial counsel failed to inform appellant of his right to appeal from his judgment of conviction, this court remanded the matter to the district court for an evidentiary hearing. *Fagoaga v. State*, Docket No. 31602 (Order of Remand, September 24, 1999).

On February 16, 2000, the district court held an evidentiary hearing. After hearing testimony from both appellant and appellant's trial counsel, the district court made a factual finding that trial counsel advised appellant of

his right to appeal, that trial counsel believed that there were no meritorious appealable issues, and that appellant agreed that he was not going to file an appeal. Upon appellate review, a district court's findings of fact with respect to claims of ineffective assistance of counsel are entitled to deference. *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994). We conclude that the district court properly denied appellant's petition. Accordingly, we

ORDER this appeal dismissed.

 _____ Young	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Jack B. Ames, District Judge
Attorney General
Elko County District Attorney
Marvel & Kump, Ltd.
Elko County Clerk