

IN THE SUPREME COURT OF THE STATE OF NEVADA

EUGENE THOMPSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35969

FILED

JAN 02 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On February 4, 1999, the district court convicted appellant, pursuant to a guilty plea, of solicitation to commit murder. The district court sentenced appellant to serve a minimum term of 48 months to a maximum term of 120 months in the Nevada State Prison. Appellant did not file a direct appeal.

On December 7, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On April 10, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant first contended that he was denied the right to a direct appeal. Specifically, appellant claimed that his counsel was ineffective because he failed to advise him of his right to a direct appeal, failed to explain his appeal rights, and failed to file a notice of appeal on appellant's behalf. He also claimed that the district court failed to advise him of his right to an appeal.

There is no constitutional requirement that counsel must always inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success on

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the merits.¹ The burden is on the client to indicate to his attorney that he wishes to file an appeal. Appellant did not argue that he asked counsel to file an appeal and there is no indication in the record that appellant did ask counsel to file a direct appeal.² Moreover, appellant was informed of his limited right to a direct appeal in the guilty plea agreement, which he stated that he signed, read, and understood during the guilty plea canvass. Thus, we conclude that the district court did not err in denying this claim.

Next, appellant contended that his guilty plea was invalid because the district court did not inform him of all of the constitutional rights that he was waiving upon entering a guilty plea. We conclude that the district court did not err in denying this claim. Appellant was thoroughly informed in the written guilty plea agreement of the constitutional rights that he was waiving by entering a guilty plea. At the beginning of the plea canvass, the matter was trailed so that appellant could review the guilty plea agreement with his counsel. During the plea canvass, appellant acknowledged that he signed, read, and understood the written guilty plea agreement. Appellant's trial counsel and appellant acknowledged during the plea canvass that entry of appellant's plea was a matter of strategy that gave him an advantage rather than going to trial. Appellant did not argue that he did not understand he was waiving his constitutional rights by entry of his plea. Thus, under the totality of the facts, we conclude that the district court did not err in determining that appellant is not entitled to relief on this claim.³

Lastly, appellant contended that the State and the district court violated NRS 176.165 and rule 32(a)(1) of the Federal Rules of Civil Procedure because his pre-sentence investigation report was not mentioned or discussed at the sentencing hearing. The district court did not err in denying this claim. This claim is outside the scope of claims that can be raised in a post-conviction petition for a writ of habeas corpus

¹See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000).

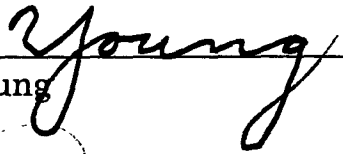
²See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

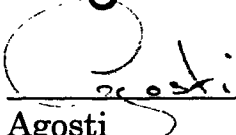
³See Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986); see also State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).


when the judgment of conviction is based upon a guilty plea.⁴ Moreover, the federal rules of civil procedure do not apply in Nevada state courts. Thus, appellant is not entitled to relief on this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Eugene Thompson
Clark County Clerk

⁴See NRS 34.810(a).

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).

⁶We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.