

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM EDWARD FERGUSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68290

FILED

NOV 19 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

In his petition filed on March 10, 2015, appellant William Ferguson claimed trial counsel was ineffective for failing to provide him with his entire file after he was convicted. This claim was outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim.

Next, Ferguson claimed the district court erred by accepting his plea because he was incompetent at the time he committed the crime. The district court denied this claim as not cognizable because Ferguson was challenging a judgment of conviction based upon a guilty plea and he failed to allege ineffective assistance of counsel or that his plea was not

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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knowing and voluntary. *See id.* While this is a correct statement of the law, Ferguson claimed in his reply to the State's motion to dismiss he was arguing it was ineffective for counsel to fail to file a direct appeal raising this issue. Because Ferguson claimed in his petition, in his answer to question 14, counsel was ineffective for failing to file an appeal, the district court should have analyzed the claim as an ineffective assistance of counsel claim. However, because the district court reached the correct result, *see Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970), we nevertheless affirm the district court's decision for the reasons discussed in this order.


We conclude Ferguson failed to demonstrate counsel was deficient or resulting prejudice for failing to file a direct appeal. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different). "[T]rial counsel does not have a constitutional duty to always inform his client of, or consult with his client about, the right to a direct appeal when the client has been convicted pursuant to a guilty plea." *Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 799 (2011). The duty only arises "when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to direct appeal." *Id.*

Pursuant to the guilty plea agreement, Ferguson waived his right to file a direct appeal, "including any challenge based upon reasonable constitutional, jurisdictional or other grounds." Moreover,

there is no indication in the record that Ferguson reserved the right to raise a challenge to his competence at the time of the crime on appeal pursuant to NRS 174.035(3). Further, even if the issue had been reserved, Ferguson does not claim he asked trial counsel to file an appeal and trial counsel refused. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Carolyn Ellsworth, District Judge
William Edward Ferguson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk