

IN THE SUPREME COURT OF THE STATE OF NEVADA

SID EARL LUTHER,

No. 36311

Appellant,


vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
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 September 22, 1998, the district court convicted appellant, pursuant to a guilty plea, of five (5) counts of robbery with the use of a deadly weapon (Counts I-V), one count of first-degree kidnapping (Count VI), and one count of possession of a firearm by an ex-felon (Count VII). The district court sentenced appellant to a total of twenty (20) to fifty (50) years for Counts I-V; a term of five (5) years to life for Count VI, to run concurrently with the sentences imposed for Counts I-V; and to an additional consecutive term of two (2) to six (6) years for Count VII. Appellant did not file a direct appeal.

On June 24, 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 May 17, 2000, the district court denied appellant's petition. This appeal followed.

Appellant first contended that he was not advised of his right to a direct appeal. Appellant's contention is belied by the record.¹ Appellant signed a guilty plea agreement that informed him of his limited

¹See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

right to appeal.² Thus, we conclude that this claim is without merit.


Appellant next raised the following four grounds in support of his petition: (1) that he was "subjected to multiple punishments for crimes arising out of the same criminal episode;" (2) that he was subjected to excessive punishments; (3) that he was deprived of his liberty beyond that authorized by statute; and (4) that his sentence for first-degree kidnapping was illegal because the kidnapping was incidental to the robbery and thus imposed no additional risk of harm. We conclude that the district court properly dismissed these claims because they did not challenge the validity of appellant's guilty plea or allege ineffective assistance of counsel.³ Moreover, appellant waived these claims by entry of his plea or by failing to raise them in a direct appeal.⁴

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

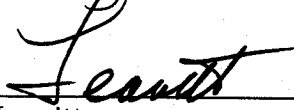
ORDER the judgment of the district court AFFIRMED.



Young J.



Agosti J.



Leavitt J.

²See Davis v. State, 115 Nev. 17, 19, 974 P.2d 658, 659 (1999) (providing that "the plea memorandum informs the defendant of the scope of his right to appeal, and thereby informs him that he has a right to appeal.").

³See 34.810(1)(a) (providing, in pertinent part, that "[t]he court shall dismiss a petition if [it] determines that [t]he [appellant's] conviction was upon a plea of guilty . . . and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.").

⁴See NRS 34.810(1)(b)(2); See also Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Williams v. State, 103 Nev. 227, 737 P.2d 508 (1987); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975);

⁵See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Kathy A. Hardcastle, District Judge
Attorney General/Carson City
Clark County District Attorney
Sid Earl Luther
Clark County Clerk