

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHAN WALLS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36713

**FILED**

DEC 13 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On March 10, 1999, the district court convicted Walls, pursuant to a guilty plea, of one count of conspiracy to sell a controlled substance. The district court sentenced Walls to serve a term of twenty-four to sixty months in the Nevada State Prison. Walls did not file a direct appeal.

On March 8, 2000, Walls 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 Walls or to conduct an evidentiary hearing. On August 16, 2000, the district court denied Walls' petition. This appeal followed.

In his petition, Walls first contended that the district court erroneously accepted his guilty plea because, according to Walls, there was insufficient evidence to support a conviction for conspiracy to sell a controlled substance.

Walls' contention is improperly made in a petition for a writ of habeas corpus. If a petitioner's conviction is based upon a guilty plea, the writ of habeas corpus may only be used to assert claims that the plea was entered unknowingly or involuntarily or entered without effective

assistance of counsel.<sup>1</sup> Because Walls' allegation does not fall within either of these two grounds, the district court properly dismissed it.

Walls also contended that his attorney should not have recommended that he plead guilty because he was factually innocent of the charged crime.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based upon a guilty plea, a petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness.<sup>2</sup> A petitioner must also demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial.<sup>3</sup> Judicial review of counsel's representation is highly deferential; a petitioner must overcome the presumption that a challenged action might be considered sound trial strategy.<sup>4</sup> Further, a court need not consider both prongs of the Strickland test if the petitioner fails to make a showing on either prong.<sup>5</sup>

It is undisputed that the substance Walls sold to the undercover police officer was not cocaine. However, factual innocence does not render counsel's recommendation that Walls plead guilty per se unreasonable. While it may be true that Walls' conduct would have been more appropriately charged under the statute prohibiting the sale of an imitation controlled substance rather than conspiracy to sell a controlled substance, our review of the record reveals that Walls received a

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<sup>1</sup>NRS 34.810(1)(a).

<sup>2</sup>Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); accord Hill v. Lockhart, 474 U.S. 52 (1985).

<sup>3</sup>Hill, 474 U.S. at 59.

<sup>4</sup>Strickland v. Washington, 466 U.S. 668, 689 (1984).

<sup>5</sup>Id. at 697.

substantial benefit by pleading guilty to the charged crime.<sup>6</sup> By pleading guilty instead of proceeding to trial, Walls was not charged under the habitual criminal statute. In fact, entering the guilty plea reduced Walls' potential sentence exposure from a possible term of five to twenty years to a possible term of one to five years.<sup>7</sup> Given our deferential review of counsel's representation and given the benefit Walls received, we conclude that counsel's recommendation that Walls plead guilty to conspiracy to sell a controlled substance was not unreasonable. Therefore, the district court did not err in denying Walls' petition in this regard.

Walls additionally contended that his attorney should have performed a more extensive pre-trial investigation and filed motions on Walls' behalf. Walls did not support these sweeping claims with any allegations that would, if true, entitle him to relief. Thus, the district court did not err in disregarding these claims.<sup>8</sup>

Citing Lozada v. State,<sup>9</sup> Walls also contended that his attorney denied him his right to a direct appeal. This contention is really a restating of his claim that counsel rendered ineffective assistance prior to Walls entering his guilty plea.

In Lozada, we determined that when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction, his attorney has a duty to perfect an appeal.<sup>10</sup> When an attorney does not fulfill this duty, he provides ineffective assistance that prejudices his client by depriving him of his right to an appeal.<sup>11</sup> Walls does not claim

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<sup>6</sup>See NRS 453.332 (making the manufacture, distribution, sale or possession with the intent to distribute or sell an imitation controlled substance unlawful); Paige v. State, 116 Nev. 206, 995 P.2d 1020 (2000) (recognizing that the Uniform Controlled Substances Act includes separate provisions regulating acts relating to an actual controlled substance and acts relating to an imitation controlled substance and holding that a defendant may not be convicted of offering to sell a controlled substance without proof of the existence of an actual controlled substance).

<sup>7</sup>Compare NRS 207.010 with NRS 453.401(1)(a), 193.130(2)(c).

<sup>8</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

<sup>9</sup>110 Nev. 349, 871 P.2d 944 (1994).

<sup>10</sup>Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994). See also Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).


<sup>11</sup>Lozada, 110 Nev. at 354-57, 871 P.2d 947-50.

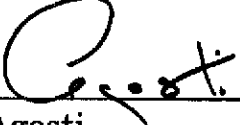
that he expressed any dissatisfaction with his conviction or that he asked counsel to file an appeal and that counsel failed to do so. Therefore, Walls is not entitled to any relief under Lozada.<sup>12</sup> Further, the written guilty plea agreement correctly informed Walls of his limited right to a direct appeal. We conclude that the district court did not err in denying Walls' petition on this ground.


In connection with his appeal deprivation claim, Walls contended that his plea was not knowingly and voluntarily entered. This contention is belied by the record.<sup>13</sup> In the signed plea agreement, Walls acknowledged that he understood the charges against him, he waived some of his rights to a direct appeal, and he voluntarily wished to enter a guilty plea because it was in his best interest to do so. Moreover, Walls acknowledged the same before the district court during the plea canvass. Thus, we conclude that the district court did not err in denying Walls' petition in this regard.

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.<sup>14</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>15</sup>

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Nathan Walls  
Clark County Clerk

<sup>12</sup>Davis, 115 Nev. at 20, 974 P.2d at 660.

<sup>13</sup>See Hargrove, 100 Nev. 498, 686 P.2d 222.

<sup>14</sup>See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>15</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.