

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH MARTINEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37051

FILED

APR 30 2002

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

ORDER OF AFFIRMANCE

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

Martinez was convicted, pursuant to a guilty plea, of one count of first-degree murder. Prior to sentencing, Martinez filed a motion to withdraw his guilty plea. Martinez' motion to withdraw his guilty plea was based on numerous claims of ineffective assistance of counsel resulting in an unknowing and involuntary plea. The State opposed the motion, and after conducting a hearing, the district court denied the motion. The district court then sentenced Martinez to serve a term of life in prison with the possibility of parole after a minimum term of twenty years, and ordered him to pay restitution in the amount of \$28,973.81.<sup>1</sup> Martinez' direct appeal from the judgment of conviction was dismissed by this court.<sup>2</sup> In his direct appeal, Martinez did not contend that the district court erred by denying his motion to withdraw his guilty plea.

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<sup>1</sup>The judgment of conviction was filed on December 15, 1997.

<sup>2</sup>See Martinez v. State, Docket No. 31599 (Order Dismissing Appeal, October 12, 1999).

On July 27, 2000, Martinez 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 NRS 34.770, the district court declined to appoint counsel to represent Martinez or conduct an evidentiary hearing. On November 8, 2000, the district court denied Martinez' petition. This timely appeal followed.

First, Martinez raised numerous claims in his petition filed below pertaining to the allegedly defective amended criminal information to which he ultimately pleaded guilty. A post-conviction petition that challenges a judgment of conviction based on a guilty plea, however, may only allege that "the plea was involuntarily or unknowingly entered or that the plea was entered without the effective assistance of counsel."<sup>3</sup> Martinez' claims of trial court error fall outside the scope of a post-conviction petition challenging a judgment of conviction based on a guilty plea. Moreover, Martinez waived these claims by pleading guilty.<sup>4</sup> Therefore, we conclude that the district court did not err in rejecting Martinez' claims.

Second, Martinez raised numerous claims in his petition pertaining to the infirmity of his guilty plea, specifically, that it was not entered knowingly and voluntarily. Martinez argued that he should be allowed to withdraw his guilty plea because: (1) he was not adequately informed of the elements of first-degree murder; (2) he was not guilty of felony murder because the murder was not foreseeable; (3) his counsel

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<sup>3</sup>NRS 34.810(1)(a).

<sup>4</sup>See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975) (holding that entry of a guilty plea waives any right to appeal regarding events occurring prior to the entry of the plea).

coerced him into pleading guilty; (4) he was not informed that probation was not available; (5) he was not aware that restitution could be imposed; and (6) he received ineffective assistance of counsel based on all of the above arguments.

As noted above, Martinez filed a presentence motion to withdraw his guilty plea based on numerous claims of ineffective assistance of counsel which resulted in his allegedly unknowing and involuntary plea. Martinez did not raise any of the issues relating to the district court's denial of the motion to withdraw his guilty plea in his direct appeal. An order denying a presentence motion to withdraw a guilty plea is reviewable on direct appeal from the judgment of conviction as an intermediate order in the proceedings.<sup>5</sup> Therefore, we conclude that the district court did not err in rejecting these claims because Martinez waived these claims by failing to pursue them on direct appeal.<sup>6</sup>

Having reviewed the record on appeal and for the reasons set forth above, we conclude that Martinez is not entitled to relief and that


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<sup>5</sup>NRS 177.045; Hargrove v. State, 100 Nev. 498, 502 n.3, 686 P.2d 222, 225 n.3 (1984); see also Hart v. State, 116 Nev. 558, 562 n.2, 1 P.3d 969, 971 n.2 (2000).

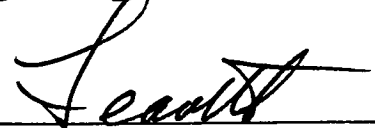
<sup>6</sup>See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999) (holding that "claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings").

briefing and oral argument are unwarranted in this case.<sup>7</sup> Accordingly,  
we

ORDER the judgment of the district court AFFIRMED.<sup>8</sup>

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

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

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

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Joseph Martinez  
Clark County Clerk

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<sup>7</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>8</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.