

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL ANTONIO ARIAS,

No. 37204

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

DEC 17 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
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 May 16, 1997, appellant entered an Alford plea to one count of first degree murder.¹ On June 16, 1997, although represented by counsel, appellant filed a proper person document labeled "petition for writ of habeas corpus/ motion to withdraw guilty plea/ request for evidentiary hearing." On July 2, 1997, the district court denied the relief requested in these documents. On August 20, 1997, appellant was sentenced to serve a term of life in the Nevada State Prison with the possibility of parole. This court dismissed appellant's direct appeal.²

On September 14, 2000, 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 December 11, 2000, the district court denied appellant's petition. This appeal followed.

In his petition, appellant raised nearly identical claims of ineffective assistance of counsel as he raised in his presentence petition/motion. In denying the instant habeas corpus petition, the district court denied appellant's claims in part on the doctrines of stare

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Arias v. State, Docket No. 30982 (Order Dismissing Appeal, April 26, 2000).

01-21189

decisis and law of the case.³ The district court specifically declined to reverse its prior ruling rejecting appellant's claims of ineffective assistance of counsel that were also raised in his presentence petition/motion. The district court further concluded that "[i]t is the law of this case that Petitioner is not entitled to an evidentiary hearing." The district court finally concluded that appellant failed to demonstrate that his counsel was ineffective.

Based upon our review of the record on appeal, we conclude that the district court erred to the extent that it applied the doctrines of stare decisis and law of the case to deny appellant's claims. In dismissing his direct appeal, this court concluded that appellant was not entitled to an evidentiary hearing on the claims raised in his presentence petition/motion because appellant had been represented by counsel at the time he filed the proper person petition/motion. This court did not determine, however, that appellant was not entitled to an evidentiary hearing on the grounds that his claims lacked specific facts or that his claims were belied by the record on appeal. Further, this court specifically concluded that "Arias may properly reassert his claims of ineffective assistance in a petition for post-conviction relief in the district court." Appellant did in fact reassert his claims of ineffective assistance in the instant post-conviction habeas corpus petition. Thus, this court's holdings on direct appeal cannot be used as law of the case to deny the claims or an evidentiary hearing.

Nevertheless, we conclude that the district court did not err in denying appellant's petition. Appellant failed to support his claims with facts, which if true, would have entitled him to relief.⁴ Appellant makes broad and sweeping allegations without any factual support. Thus, we conclude that the district court did not err in determining that appellant failed to demonstrate that he received the ineffective assistance of counsel.⁵ Therefore, we affirm the order of the district court to deny appellant's petition.

³See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

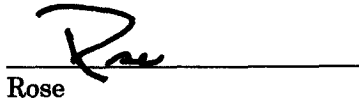
⁴See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

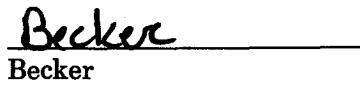
⁵See Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

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.⁶ Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General/Carson City
Clark County District Attorney
Manuel Antonio Arias
Clark County Clerk

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975), cert. denied, 423 U.S. 1077 (1976).