

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL L. WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 37412

**FILED**

JUL 30 2002

ORDER OF AFFIRMANCE

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

This is a proper person appeal from orders of the district court denying appellant's post-conviction petition for a writ of habeas corpus, motion for the appointment of counsel, and motion for rehearing of his post-conviction petition for a writ of habeas corpus.

On January 12, 2000, the district court convicted appellant, pursuant to a guilty plea, of burglary while in possession of a firearm (count I) and battery on an officer (count II). The district court sentenced appellant to serve concurrent terms in the Nevada State Prison of thirty-six to one hundred and fifty-six months for count I, and one year for count II. The sentences were ordered to run concurrently with appellant's sentence in another case. No direct appeal was taken. On May 12, 2000, the district court entered an amended judgment of conviction awarding appellant 150 days of credit for time served.

On September 27, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus and a motion for the appointment of counsel in the district court. The State opposed the petition and motion. 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 28, 2000, the district court orally denied appellant's petition and motion. On January 19, 2001 the district court entered a written order denying the petition and motion. On

January 12, 2001, appellant filed a motion for rehearing of his petition. On February 2, 2001, the district court denied appellant's motion for rehearing of his petition. This appeal followed.<sup>1</sup>

In his petition, appellant first claimed that he received ineffective assistance of standby counsel. Specifically, appellant claimed that standby counsel acted as a "surrogate prosecutor" by (1) failing to contest the arrest, seizure of property, and testimony of the witnesses at the preliminary hearing, and (2) coercing appellant to enter the plea bargaining process. A defendant who waives his right to counsel and chooses to represent himself does not have a constitutional right to standby counsel.<sup>2</sup> Because such a defendant does not have a constitutional right to standby counsel, he also has no right to the effective assistance of standby counsel.<sup>3</sup> Additionally, appellant indicated at the plea canvass that his decision to plead guilty was freely and voluntarily made, and also signed a guilty plea agreement stating that he was not acting under duress or coercion. Therefore, we conclude that the district court did not err in rejecting these claims.

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<sup>1</sup>To the extent that appellant sought to appeal the district court's denial of his motion for rehearing, this court lacks jurisdiction to consider the appeal. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995).

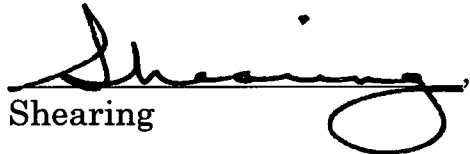
<sup>2</sup>See Harris v. State, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997); accord U.S. v. Kienenberger, 13 F.3d 1354, 1356 (9th Cir. 1994); U.S. v. Morrison, 153 F.3d 34, 55 (2d Cir. 1998).

<sup>3</sup>See Morrison, 153 F.3d at 55; see also Faretta v. California, 422 U.S. 806, 834 n.46 (1975) ("[A] defendant who elects to represent himself cannot thereafter complain that the quality of his own defense amounted to a denial of 'effective assistance of counsel.'"). See generally McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996) (holding that a post-conviction petitioner who has no constitutional or statutory right to the appointment of counsel has no right to the effective assistance of post-conviction counsel).

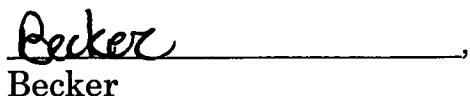
Next, appellant claimed that (1) the warrantless search of his residence was illegal, (2) he was not properly canvassed by the justice court to determine if he was mentally capable to proceed as his own attorney, and (3) he suffered cruel and unusual punishment and was denied his right to a fair sentencing hearing because he was being housed in a prison segregation unit normally used for disciplinary purposes. Appellant waived these claims by failing to raise them in a direct appeal and failing to demonstrate good cause and prejudice for his failure to do so.<sup>4</sup> Therefore, we conclude that the district court did not err in rejecting these claims.

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

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<sup>4</sup>See Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999); see also 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 that occurred prior to the entry of the plea).

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

cc: Hon. Jeffrey D. Sobel, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Michael L. Williams  
Clark County Clerk