

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL BRIAN HADDOX,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 38246

FILED

DEC 05 2001

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of Level II Trafficking in a controlled substance, and one count of sale of a controlled substance. The district court sentenced appellant to a prison term of 36 to 96 months for trafficking, and a concurrent prison term of 12 to 36 months for the sale of a controlled substance. The district court further imposed a fine in the amount of \$2,000.00.

Appellant's sole contention on appeal is that his trial counsel admitted appellant's guilt to the jury without appellant's consent. This court has consistently held that claims of ineffective assistance of counsel are more appropriately raised in the first instance in the district court, where any factual uncertainties can be resolved in an evidentiary hearing.¹ This court has recognized an exception to this rule, where the record is clear and there are no factual disputes.² This is not such a case.

The only evidence in the record that appellant did not consent to counsel's statements is a comment made by appellant at the close of trial: "When somebody says in their opening statement, they say my client is guilty . . ." At that point, the district judge interrupted appellant and opined that trial counsel had done a good job for appellant. Appellant continued, "If I had been guilty, yes, sir, but . . ." and was again interrupted by the district judge. In sum, this claim is more appropriately


¹See e.g., Gibbons v. State, 97 Nev. 520, 634 P.2d 1214 (1981).

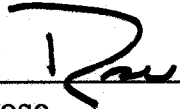
²See e.g., Johnson v. State, 117 Nev. ___, 17 P.3d 1008 (2001); Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994).


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raised in a post-conviction proceeding, where the district court can conduct an evidentiary hearing to determine whether appellant consented to counsel's arguments. Accordingly, we decline to consider appellant's argument on the merits, and we

ORDER this appeal DISMISSED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. David A. Huff, District Judge
Attorney General/Carson City
Lyon County District Attorney
Wayne A. Pederson
Lyon County Clerk