

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT RICHARD SALMAN,
Appellant,
vs.
THE STATE OF NEVADA, DIRECTOR,
RICHARD KIRKLAND, DEPARTMENT
OF MOTOR VEHICLES AND PUBLIC
SAFETY AND CHIEF WARREN
LOTZOW, PAROLE AND PROBATION,
Respondents.

No. 38323

FILED

MAY 23 2002

JANE TTE 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 dismissing appellant's post-conviction petition for a writ of habeas corpus.

On July 14, 1998, the district court convicted appellant, pursuant to a jury verdict, of fifteen counts of being an ex-felon in possession of a firearm. The district court sentenced appellant to serve fifteen concurrent maximum terms of thirty-six months in the Nevada State Prison, with a minimum parole eligibility of twelve months. The district court suspended the sentences and placed appellant on probation for an indeterminate period of time, not to exceed eighteen months.

Appellant filed a proper person direct appeal on July 14, 1998. This court remanded the matter to the district court for the limited

purpose of securing counsel for appellant.¹ The district court determined that appellant was not indigent and ordered him to retain counsel. On March 15, 1999, appellant submitted to this court a proper person demand to pursue his direct appeal in proper person. This court ordered appellant to proceed through counsel, and cautioned appellant that failure to do so could result in dismissal.² Appellant failed to secure counsel and this court dismissed his direct appeal.³

On October 16, 2000, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court.⁴ The State opposed the petition and moved to dismiss it. Appellant opposed the motion to dismiss. Pursuant to NRS 34.770, the district court declined to conduct an evidentiary hearing. On July 12, 2001, the district court dismissed appellant's petition. This appeal followed.

¹Salman v. State, Docket No. 32704 (Order of Remand for Designation of Counsel, September 11, 1998).

²Salman v. State, Docket No. 32704 (Order, January 7, 2000).

³Salman v. State, Docket No. 32704 (Order Dismissing Appeal, March 17, 2000).

⁴Following this court's dismissal of his direct appeal, appellant filed a proper person writ of mandamus in this court, requesting recusal of the justices of Nevada Supreme Court in matters involving appellant, and requesting that this court order district court Judge W. Hardesty to act upon appellant's proper person habeas corpus petition filed in the district court. This court denied the petition. See Salman v. The Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and the Honorable James W. Hardesty, District Judge, Docket No. 38256 (Order Denying Petition, September 12, 2001).

First, appellant raises numerous claims that could have been raised on direct appeal: that the district court required him to file his petition for a writ of habeas corpus as a post-conviction petition rather than a pre-conviction petition and that he was denied a hearing on the petition,⁵ that he was not allowed to present certain evidence at trial, that his pre-trial motions were denied, and that he was not Mirandized⁶ by the police. Because appellant could have raised these claims on direct appeal, these claims have been waived absent a demonstration of good cause and actual prejudice to appellant.⁷ Appellant has failed to provide any reason for presenting these claims at this time, nor has he provided any arguments as to how he might be prejudiced. We note that appellant's direct appeal was dismissed because appellant failed to obey an order of this court, and that appellant was fully aware of the potential consequences of such failure.⁸ Failure to comply with an order of this court does not constitute good cause. Therefore, we conclude that the district court did not err in dismissing these claims.

Next, appellant claimed that his plea of not guilty was coerced by the court because he was required to enter it "under threat of gun and

⁵Appellant filed a document he characterized as a petition for writ of habeas corpus while his case was pending at the Justice Court level. Apparently, this is the petition to which appellant directs these claims.

⁶See Miranda v. Arizona, 384 U.S. 436 (1966).

⁷NRS 34.810(1)(b); Franklin v. State, 110 Nev. 750, 751, 877 P.2d 1058, 1059 (1994) (overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999)).

⁸See Salman v. State, Docket No. 32704 (Order, January 7, 2000).

imprisonment, even though [he] did not understand the charges."⁹ This claim is without merit. Appellant pleaded not guilty, went to trial and was found guilty by a jury. Appellant's only other alternative would have been to plead guilty.¹⁰ The law requires that a guilty plea be made intelligently and voluntarily.¹¹ There is no such requirement for a plea of not guilty because such a plea does not involve the waiver of any constitutional rights. Moreover, despite appellant's assertions, there is nothing in the record to indicate that appellant's plea of not guilty was produced by actual or threatened physical harm, or that appellant's will was overborne.¹² Finally, although subsequent to the preliminary hearing appellant consistently claimed not to understand the charges, the record shows that at the preliminary hearing appellant did in fact fully understand the charges against him. Therefore, we conclude that the district court did not err in dismissing this claim.

⁹Apparently appellant's contention was that the district court erred in requiring that he enter a plea at the hearing held to consider appellant's motion to dismiss and for entry of plea.

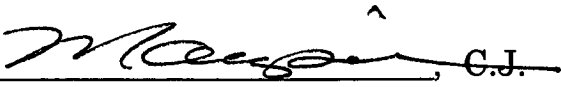
¹⁰The record shows that appellant was twice offered a plea agreement, before he entered a plea of not guilty, and after. Appellant filed with the district court a document entitled "Accused Response to Accuser's Attempted Plea Bargain" in which he stated unequivocally that "in case [the State] has not figured it out by now" appellant rejected the offer.

¹¹See generally *Brady v. U.S.*, 397 U.S. 742 (1970).

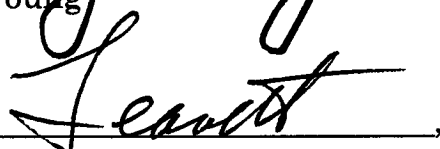
¹²See id. at 750.

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.¹³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹⁴


_____, C.J.
Maupin


_____, J.
Young


_____, J.
Leavitt

cc: Hon. James W. Hardesty, District Judge
Attorney General/Carson City
Washoe County District Attorney
Albert Richard Salman
Washoe District Court Clerk

¹³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

¹⁴We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.