

IN THE SUPREME COURT OF THE STATE OF NEVADA

FORREST DILLON MATHEWS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38763

FILED

AUG 15 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court dismissing appellant Forrest Dillon Mathews' post-conviction petition for a writ of habeas corpus.

On December 15, 2000, Mathews was convicted, pursuant to a guilty plea, of one count of trafficking in a controlled substance, a violation of NRS 453.3385(2). The district court sentenced Mathews to serve a prison term of 36-120 months, and ordered him to pay a fine of \$5,000.00; he was given credit for 111 days time served.

On April 5, 2001, Mathews filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Mathews, and counsel subsequently filed a supplemental petition. In the petitions, Mathews contended that his counsel was ineffective in failing to (1) "take prompt action to protect petitioner, and fail[ing] to act as an advocate on behalf of petitioner"; (2) investigate the charges against him, and weigh and analyze the seized controlled substances; (3) file motions to withdraw his guilty plea and suppress evidence; (4) communicate with him about sentencing, and present mitigating evidence at sentencing pertaining to his drug addiction and familial responsibilities; and (5) prepare him for his meeting with the Division of Parole and Probation. Mathews also alleged

that his counsel failed to perfect a direct appeal from the judgment of conviction.

The State opposed Mathews' habeas petition and on September 13, 2001, filed a motion to dismiss his petition. The district court did not conduct an evidentiary hearing, and on October 11, 2001, granted the State's motion and dismissed Mathews' petition. This timely appeal followed.

Mathews contends that the district court erred in dismissing his habeas petition without conducting an evidentiary hearing. Mathews argues that he "presented to the district court all [the] evidence he possessed," and that his petitions contained the requisite factual specificity. We disagree.

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) that his counsel's performance fell below an objective standard of reasonableness; and (2) that but for counsel's deficient performance, the outcome of the proceedings would have been different.<sup>1</sup> Also, "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."<sup>2</sup> In other words, "[t]he burden is on the client to indicate to his attorney that he wishes to pursue an appeal."<sup>3</sup> A

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<sup>1</sup>Strickland v. Washington, 466 U.S. 668, 687, 694 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996); see also Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>2</sup>Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994) (citing Fawaz v. State, 105 Nev. 682, 783 P.2d 425 (1989)); see also Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

<sup>3</sup>Davis v. State, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

petitioner is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that, if true, would entitle him to relief.<sup>4</sup>

Our review of the record on appeal reveals that the district court did not err in dismissing Mathews' petition without conducting an evidentiary hearing. Mathews' claims consisted of unsupported, speculative, and conclusory allegations lacking the necessary factual specificity, and he also failed to demonstrate how his allegedly ineffective counsel prejudiced his defense.<sup>5</sup> In his petition below, Mathews failed to articulate, for example: (1) how further investigation by his counsel would have affected the outcome of the proceedings, or what specific exculpatory or mitigating evidence would have been discovered by a more complete investigation; (2) what facts would mandate the granting of a motion to withdraw his guilty plea or suppress evidence; (3) the nature of his addiction and how it was related to his crime, whether he was amenable to treatment, and what exactly his familial responsibilities entailed and how they were relevant to the proceedings; and (4) how further preparation would have impacted his meeting with the Division, and what specifically counsel could have done to prepare him. Finally, Mathews did not allege that at any point he expressly asked his counsel to perfect an appeal.<sup>6</sup> Therefore, we conclude that Mathews was not entitled to an evidentiary hearing on his claims in the district court.

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<sup>4</sup>Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

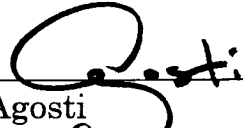
<sup>5</sup>See id.


<sup>6</sup>Davis, 115 Nev. at 20, 974 P.2d at 660.

Having considered Mathews' contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Steven R. Kosach, District Judge  
Hardy & Woodman  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk