

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHAN BLAYLOCK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 38967

FILED

OCT 04 2002

ORDER OF AFFIRMANCE

J. NICHOLAS BLOOM  
CLERK OF SUPREME COURT  
BY: *J. Richard*  
CHIEF DEPUTY CLERK

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 September 20, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count of first degree kidnapping and one count of robbery. The district court sentenced appellant to serve terms totaling seventy-two months to three hundred months in the Nevada State Prison. No direct appeal was taken.

On August 21, 2001, 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 7, 2001, the district court denied appellant's petition. This appeal followed.<sup>1</sup>

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<sup>1</sup>The November 6, 2001 minutes indicate that the district court received a response to the petition submitted by appellant's former trial counsel. This response is not a part of the record on appeal. This court recently held that a petitioner's statutory rights are violated when the district court improperly expands the record with the use of an affidavit in lieu of conducting an evidentiary hearing when an evidentiary hearing is

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In his petition, appellant first contended that his counsel was ineffective for failing to advise him of his right to a direct appeal. We conclude that the district court did not err in denying this claim. The record on appeal reveals that appellant was sufficiently advised of his limited right to appeal in the written guilty plea agreement. Specifically, appellant was advised that he waived his “right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings.” The guilty plea memorandum further contains language that all of the “waiver of rights have been thoroughly explained to me by my attorney.” Thus, appellant’s contention that he was not advised of his right to appeal is without merit.<sup>2</sup>

Second, appellant claimed that his counsel was ineffective for failing to inform him of his inalienable right to appear before a grand jury. We conclude that the district court did not err in denying this claim. A prosecution may be initiated by either the filing of a grand jury presentment or indictment or the filing of an information.<sup>3</sup> Appellant’s case originated with the filing of an information after a preliminary

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*... continued*

required. Mann v. State, 118 Nev. \_\_\_, 46 P.3d 1228 (2002). Although we conclude that the district court erred to the extent that it considered the response submitted by appellant’s former trial counsel, appellant was not prejudiced by the error because appellant was not entitled to an evidentiary hearing on the claims that he raised in the petition.

<sup>2</sup>Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999); Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

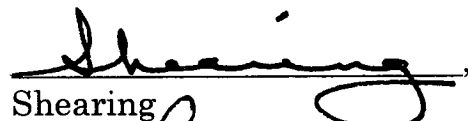
<sup>3</sup>Nev. Const. art. 1, § 8; see also NRS 172.015; NRS 173.015; NRS 173.025; NRS 173.035.

hearing. Therefore, appellant's counsel was not ineffective for failing to advise appellant about the grand jury process.<sup>4</sup>


Finally, appellant claimed that he was not provided with any evidence of the case, that the district attorney failed to give him notice that he was under investigation by the grand jury, and that his right to appear before a grand jury was violated. These claims fell outside the scope of claims permissible in a habeas corpus petition challenging a conviction based upon a guilty plea.<sup>5</sup>

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>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

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<sup>4</sup>Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>5</sup>NRS 34.810(1)(a).

<sup>6</sup>Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Stephan Blaylock  
Clark County Clerk