

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE SHUM SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39715

FILED

MAY 07 2003

ORDER OF AFFIRMANCE

JENNIFER A. BLOOM
CLERK OF SUPREME COURT
J. Richard

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus. Appellant Maurice Shum Smith pleaded guilty to first-degree murder in June 1998. In his instant petition, he claims that his counsel at that time were ineffective because they failed to file an appeal despite his request to do so. We conclude that this claim has no merit and affirm.

In Lozada v. State, we recognized that "an attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction."¹ The United States Supreme Court has similarly held that to be constitutionally effective, counsel must

consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all

¹110 Nev. 349, 354, 871 P.2d 944, 947 (1994).

the information counsel knew or should have known. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.²

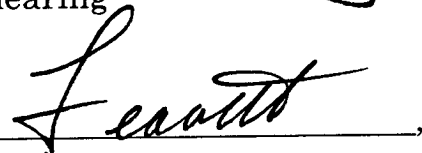
The district court held an evidentiary hearing at which Smith's former counsel, Peter LaPorta and Laurel Duffy, and Smith testified. Both former counsel testified that they did not remember any request by Smith to file an appeal. LaPorta stated unequivocally that Smith never indicated he wanted to appeal, explaining that "that is such a highly unusual request on a negotiated plea that I would have had an independent recollection of that." Smith's current counsel did not include this evidence in the factual statements in his briefs to this court. In addition, the record shows that Smith was clearly informed that by pleading guilty he waived his right to appeal, that the State would recommend a sentence of 20 years to life in prison--the sentence ultimately imposed, and that this was the minimum possible sentence. The district court reasonably rejected Smith's testimony that he was not so informed and that he asked both of his counsel to file an appeal.

²Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000) (citation omitted).

Smith has failed to show that he reasonably demonstrated to counsel an interest in appealing or that a rational defendant would want to appeal the conviction in this case. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Nancy M. Saitta, District Judge
Sciscento & Montgomery
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk