

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN J. RODGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40016

FILED

APR 09 2002

JANE FLEMING BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is a proper person appeal from a district court order denying appellant Jonathan J. Rodgers' post-conviction petition for a writ of habeas corpus.

On February 12, 2002, Rodgers was convicted, pursuant to a jury verdict, of burglary (count I), attempted grand larceny auto (count II), and possession of burglary tools (count III). The district court sentenced Rodgers to serve a prison term of 28 to 72 months for count I, a concurrent prison term of 12 to 36 months for count II, and a concurrent jail term of 12 months for count III. Rodgers did not file a direct appeal.

On April 29, 2002, Rodgers filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition arguing, among other things, that Rodgers' petition should be denied because it was not in the proper form set forth by statute. Pursuant to NRS 34.750 and NRS 34.770, the district court declined to appoint counsel or to conduct an evidentiary hearing. On June 28, 2002, the district court denied Rodgers' petition finding, "it does not

follow the proper form pursuant to NRS 34.730, and NRS 34.735.” This appeal followed.

This court's review of the record on appeal reveals that the district court erred in denying Rodgers' petition based on the finding that it was not in the proper form as required by NRS 34.735. Although the petition did not contain every requirement set forth in NRS 34.735, we conclude that Rodgers' petition substantially complied with that statute. The petition contained a proper caption, set forth the procedural history of the case, set forth claims of ineffective assistance of counsel, and was verified.¹ Therefore, we conclude the district court should have considered the merits of the claims raised in the petition.

Nonetheless, we affirm the order of the district court denying the petition because Rodgers' claims of ineffective assistance of counsel failed for lack of specificity.² In the petition, Rodgers alleged that his trial counsel was ineffective in failing to file a pretrial motion to gain access to evidence and in not adequately communicating with him. Rodgers, however, did not identify or describe the exculpatory evidence trial counsel would have gained access to and failed to specify how further investigation and communication would have changed the outcome of the proceedings.

Moreover, Rodgers' own handwritten record of the events of his case, which he included in the appendix of his petition, did not support

¹See NRS 34.735; *Sheriff v. Scilio*, 96 Nev. 776, 616 P.2d 402 (1980).

²See *Hargrove v. State*, 100 Nev. 498, 686 P.2d 222 (1984).


his claims of ineffective assistance of counsel. Rodgers' record of events indicates that on December 3, 2001, he met with trial counsel and discussed the transcripts and discovery in his case. Additionally, Rodgers' record of events notes that his trial counsel communicated with him on numerous occasions between November 7, 2001, and December 17, 2001. Accordingly, Rodgers' claims that his trial counsel's performance was deficient was not supported by his own recitation of the facts of his case.

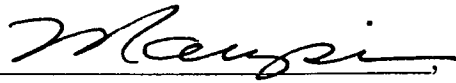
Because we conclude that the claims of ineffective assistance of counsel raised in the petition failed for lack of specificity, we affirm the district court's order denying Rodgers' petition. However, our review of the judgment of conviction reveals two clerical errors. First, the judgment of conviction states that Rodgers was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Additionally, although the judgment of conviction sets forth the sentence for count III, it does not indicate that the jury convicted Rodgers of count III or specify that count III was a conviction for the crime of possession of burglary tools. We therefore conclude that this matter should be remanded to the district court for correction of the judgment of conviction.

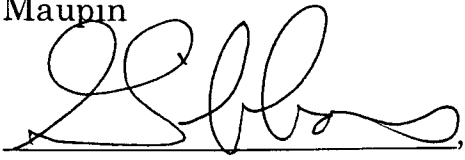
Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.³ Accordingly, we

³See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court AFFIRMED, and
REMAND this matter to the district court for the limited purpose of
correcting the judgment of conviction.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. John S. McGroarty, District Judge
Jonathan J. Rodgers
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk