

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOEY STRUSSENBERG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40284

FILED

AUG 15 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
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 May 30, 2001, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault on a minor under the age of sixteen years and one count of attempted sexual assault on a minor under fourteen years. The district court sentenced appellant to serve two consecutive terms of twenty-four to one hundred and twenty months in the Nevada State Prison. This court dismissed appellant's untimely direct appeal for lack of jurisdiction.<sup>1</sup>

On May 21, 2002, 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 August 27, 2002, the district court denied appellant's petition. This appeal followed.

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<sup>1</sup>Strussenberg v. State, Docket No. 38593 (Order Dismissing Appeal, November 14, 2001).

In his petition, appellant claimed that his trial counsel was ineffective for failing to inform appellant of his right to a direct appeal and for failing to file a timely notice of appeal. We conclude that this claim lacks merit. The record on appeal reveals that appellant was advised of his limited right to appeal in the written guilty plea agreement. Specifically, appellant was advised that by entry of his plea he waived his "right to appeal the conviction . . . unless the appeal is based upon reasonable constitutional jurisdictional or other grounds that challenge the legality of the proceedings." Thus, appellant's contention that he was not advised of his right to appeal is belied by the record on appeal.<sup>2</sup> Moreover, there is no constitutional requirement that counsel must always inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.<sup>3</sup> Appellant does not allege that he asked counsel to file a direct appeal and nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Therefore, appellant failed to demonstrate that trial counsel was ineffective in this regard.

Next, appellant claimed that his trial counsel was ineffective for failing to properly investigate the case. Appellant claimed that his trial counsel would have learned that the sex was consensual and not an "assault" if counsel had performed a sufficient investigation. In entering

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

<sup>3</sup>See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

his guilty plea to two counts of attempted sexual assault on a minor, appellant made a factual admission to the charged offenses.<sup>4</sup> In exchange for his guilty plea, appellant avoided more serious charges exposing appellant to greater terms of imprisonment. Appellant failed to demonstrate a reasonable probability that, but for counsel's errors, appellant would not have pleaded guilty and would have insisted on going to trial.<sup>5</sup> Appellant indicated in the written guilty plea agreement, which he acknowledged reading, signing and understanding, that he had discussed possible defenses with his trial counsel. Appellant's entry of his guilty plea relieved counsel from any further obligation to investigate the case. Thus, we conclude that appellant failed to demonstrate that his trial counsel was ineffective in this regard.

Next, appellant claimed that his trial counsel used coercion to obtain his plea and sided with the district attorney. Appellant failed to support this claim with specific facts, which if true, would have entitled him to relief.<sup>6</sup> Thus, appellant failed to demonstrate that his trial counsel was ineffective in this regard.

Finally, appellant claimed that his trial counsel was ineffective at sentencing for stipulating to consecutive sentences.

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<sup>4</sup>Specifically, appellant admitted that he willfully, unlawfully, feloniously attempted to sexually assault the victims against the will of the victims or under circumstances that he knew or had reason to believe that the victims were mentally incapable of resisting or understanding the nature of his conduct.

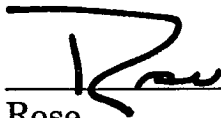
<sup>5</sup>See Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).


<sup>6</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

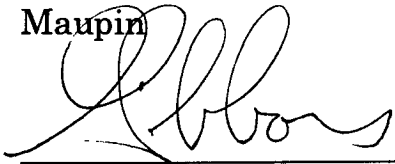
Appellant failed to demonstrate that his trial counsel's performance was unreasonable in this regard.<sup>7</sup> Appellant stipulated to consecutive sentences as a term of the guilty plea agreement. Thus, appellant's trial counsel was not ineffective for stipulating to the imposition of consecutive sentences.

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>8</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Joseph T. Bonaventure, District Judge  
Joey Strussenberg  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>7</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>8</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).