

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALLEN WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41087

FILED

FEB 11 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order denying appellant Allen White's post-conviction petition for a writ of habeas corpus.

On March 28, 2002, the district court convicted White, pursuant to a nolo contendere plea, of two counts of attempted lewdness with a child under the age of fourteen years. The district court sentenced White to serve two consecutive prison terms of 24 to 120 months. White did not file a direct appeal.

On November 8, 2002, White filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent White, and on February 21, 2003, the district court conducted an evidentiary hearing. On April 4, 2003, the district court denied White's petition. White filed the instant appeal.

White contends that the district court erred in denying his petition because his trial counsel was ineffective for: (1) depriving him of his direct appeal without his consent; and (2) failing to conduct an adequate pretrial investigation, including interviewing the eyewitnesses, the victims and their mother. White argues that the cumulative effect of

the ineffective assistance of trial counsel resulted in a constitutionally unreliable sentence. We disagree.

The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.¹ In this case, after hearing testimony from White and trial counsel Virginia Eichacker, the district court found that White did not request an appeal and that Eichacker conducted an adequate pretrial investigation. White has not demonstrated that the district court's findings are not supported by substantial evidence or are clearly wrong. At the post-conviction evidentiary hearing, Eichacker testified that White did not request an appeal and that, if White had done so, she would have filed a direct appeal on his behalf.² Additionally, Eichacker testified that she reviewed the pretrial discovery, spoke with the victim's mother, and interviewed White, and was convinced that the State had a meritorious case if White had proceeded to trial. Finally, Eichacker testified that she did not conduct any further investigation such as interviewing the eyewitnesses and the victims, or hiring an investigator, because White had decided to enter an Alford plea.³ Accordingly, White has failed to show that the district court erred in rejecting his claims that his trial counsel was ineffective in failing to file a direct appeal or in failing to adequately investigate.

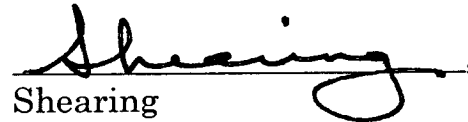
¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

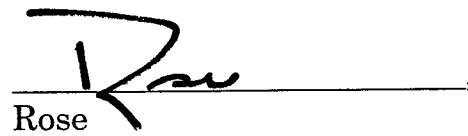
²Although White testified that he requested an appeal, the district court found that his testimony was not credible.

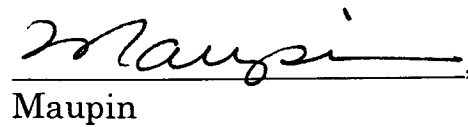
³North Carolina v. Alford, 400 U.S. 25 (1970).

Having considered White's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Sally L. Loehrer, District Judge
Moran & Associates
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk