

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS WESLEY NEAL,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
CRAIG FARWELL,  
Respondent.

No. 42328

FILED

MAY 28 2004

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Appellant was originally convicted, pursuant to a guilty plea, of one count of attempted sexual assault and one count of theft. The district court sentenced appellant to a prison term of 96 to 240 months for attempted sexual assault, and to a concurrent prison term of 24 to 60 months for theft. The district court further imposed a sentence of lifetime supervision pursuant to NRS 176.0931. The judgment of conviction was entered on June 5, 2002, and appellant did not file a notice of appeal.

On March 27, 2003, appellant filed a post-conviction petition for a writ of habeas corpus. The district court appointed counsel for appellant, conducted an evidentiary hearing, and denied the petition. Among the issues raised in the petition below, appellant claimed that his guilty plea was not knowing and voluntary because he was not informed that he would be subjected to lifetime supervision. Despite appellant's testimony to the contrary, appellant's trial counsel testified at the evidentiary hearing that he not only informed appellant of the

requirement for lifetime supervision, but that they discussed the issue at length prior to appellant's signing of the guilty plea agreement. In denying the petition, the district court specifically found that appellant's testimony on this issue was not credible.

Appellant's sole contention on appeal is that the district court erred because the district court did not base its determination of appellant's credibility on any supporting information in the pleadings or transcript.


"Determining issues of credibility is within the province of the trier of fact. On matters of credibility, this court will not reverse a trial court's finding absent clear error."<sup>1</sup> In this case, both appellant and trial counsel testified during the evidentiary hearing. The district court was able to observe the witnesses' demeanor, and to consider the motivations and biases of each in relation to the testimony given. Appellant cites no authority that supports the proposition that a determination of credibility must be based on information found in the pleadings or transcript. Indeed, it is unlikely that evidence of many of the factors affecting credibility will be found in a cold record because they are based on an observation of the witness.

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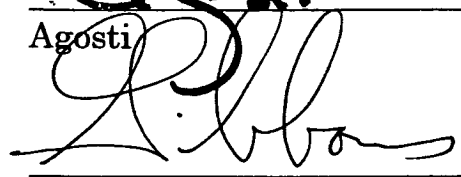
<sup>1</sup>Williams v. State, 113 Nev. 1008, 1014, 945 P.2d 438, 442 (1997), receded from on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000) (citing Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990), abrogation recognized by Harte v. State, 116 Nev. 1054, 13 P.3d 420 (2000)).

In sum, appellant has failed to demonstrate that the district court clearly erred in determining that trial counsel was more credible than appellant. We therefore conclude that appellant's contention is without merit, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

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

cc: Hon. David A. Huff, District Judge  
Rick Lawton  
Attorney General Brian Sandoval/Carson City  
Lyon County District Attorney  
Lyon County Clerk