

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LOUIS LISONI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42612

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a district court order revoking probation. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On April 14, 2003, appellant Daniel Louis Lisoni was convicted, pursuant to a guilty plea, of one count of fraudulent use of a credit card. The district court sentenced Lisoni to a prison term of 18 to 48 months, but suspended execution of the sentence and placed Lisoni on probation for a time period not to exceed 4 years. Lisoni did not file a direct appeal.

On November 7, 2003, the Division of Parole and Probation filed a probation violation report against Lisoni. Thereafter, on December 12, 2003, the district court conducted a probation revocation hearing. At the hearing, Lisoni admitted that he violated his probation by failing to pay restitution and by being arrested for, and later pleading guilty to, a criminal charge of attempted grand larceny. After hearing arguments

from counsel, the district court entered an order revoking Lisoni's probation. Lisoni filed this timely appeal.

Lisoni contends that the district court order revoking his probation should be reversed because he received ineffective assistance of counsel at the revocation proceedings. In particular, Lisoni alleges that his counsel failed to communicate with him to discuss potential revocation issues before the probation revocation hearing. We decline to consider Lisoni's contention.

Claims of ineffective assistance of counsel "are generally more appropriately raised in the first instance in a post-conviction proceeding where the district court can conduct an evidentiary hearing to review and resolve factual uncertainties."¹ In this case, there has been no evidentiary hearing on Lisoni's allegations of ineffective assistance of counsel, and Lisoni has failed to show why his claim should not first be considered in the district court.² Therefore, we decline to address Lisoni's claim because it is more appropriately raised in a post-conviction proceeding in the district court in the first instance.

¹See Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

²Cf. Jones v. State, 110 Nev. 730, 877 P.2d 1052 (1994) (concluding that an evidentiary hearing was not necessary where counsel's actions were a matter of record, not disputed, and per se improper).

Having considered Lisoni's contention and concluded that it is not appropriate for review in this appeal, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk