

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAUL CARDENAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42721

FILED

NOV 17 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is a proper person appeal from an order of the district court denying appellant Esaul Cardenas' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On July 8, 2003, the district court convicted Cardenas, pursuant to a guilty plea, of two counts of lewdness with a child under the age of fourteen years. The district court sentenced Cardenas to serve two concurrent terms of life in the Nevada State Prison with the possibility of parole after ten years. Cardenas' direct appeal is pending in Docket No. 41630.


On November 14, 2003, Cardenas 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 Cardenas or to conduct an evidentiary hearing. On January 30, 2004, the district court denied Cardenas' petition. This appeal followed.

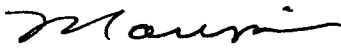
In his petition, Cardenas contended that his confinement was illegal because the district court had not appointed him counsel to assist him with his direct appeal. We note, however, that Cardenas was


appointed appellate counsel. Consequently, we conclude that the district court did not err in denying Cardenas' habeas corpus petition.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that Cardenas is not entitled to relief and that briefing and oral argument are unwarranted.¹ Accordingly, we

ORDER the judgment of the district court AFFIRMED without prejudice to Cardenas to file a post-conviction petition for a writ of habeas corpus at the conclusion of his direct appeal.²


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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

¹See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

²We note that any subsequent petition for a writ of habeas corpus must comply with the statutory requirements for the filing of such writ. See NRS 34.720 - 738.