

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWIN HODGKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42768

FILED

NOV 15 2004

ORDER OF AFFIRMANCE

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
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. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant was originally convicted, pursuant to a plea of nolo contendere,¹ of one count of attempted murder with the use of a deadly weapon resulting in substantial bodily harm. The district court sentenced appellant to a prison term of 65 to 240 months, with an equal and

¹Appellant pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). Under Nevada law, "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere." State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).

consecutive term for the use of a deadly weapon. Appellant did not file a direct appeal.

Appellant filed a proper person post-conviction petition for a writ of habeas corpus, and the district court appointed counsel, who filed a supplemental petition. The district court denied the petition without conducting an evidentiary hearing.

Appellant contends that he should be allowed to withdraw his plea because he was not informed that he was not eligible for probation.² Appellant's contention is without merit. Although he did not receive probation, the offense to which appellant pleaded was probationable.³ NRS 193.165(4) provides that probation shall not be granted to an individual convicted of murder with the use of a deadly weapon, but does not preclude probation for one convicted of attempted murder with the use of a deadly weapon.

²See Skinner v. State, 113 Nev. 49, 50, 930 P.2d 748, 749 (1997) (holding that a plea is "fatally defective" if the defendant was not informed that probation was not available) (quoting Meyer v. State, 95 Nev. 885, 887, 603 P.2d 1066, 1067 (1979)).

³See NRS 193.165(4) (enumerating felonies with the use of a deadly weapon for which probation is not available).

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.⁴

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

⁴Although this court has elected to file the appendix submitted, it is noted that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c); NRAP 32(a). Specifically, the documents are not in chronological order, counsel did not include a copy of the petition filed below, and counsel did not include a copy of the order appealed from. Counsel is cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).

cc: Hon. Jackie Glass, District Judge
Law Office of Betsy Allen
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk