

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFERY DENNIS EDLER A/K/A  
JEFFREY DENNIS EDLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45939

**FILED**

MAR 24 2006

MANETTA BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 17, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of robbery. The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. The district court imposed this term to run consecutively to any other terms that appellant was currently serving. No direct appeal was taken.

On May 4, 2005, appellant 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 appellant or to conduct an evidentiary hearing. On August 16, 2005, the district court denied appellant's petition in a summary written order. This appeal followed.

In his petition, appellant contended that he received ineffective assistance of counsel. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.<sup>1</sup> The court need not address both components of the inquiry if the petitioner makes an insufficient showing on either one.<sup>2</sup>

First, appellant claimed that his trial counsel was ineffective for failing to object to appellant's being adjudged guilty of robbery. Appellant claimed that he only admitted to facts supporting a conviction of assault, and thus, he argued that the district court should not have accepted his guilty plea to robbery. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The record belies appellant's claim that he only admitted to facts supporting a conviction for assault.<sup>3</sup> During the plea canvass, appellant stated, "I had an altercation with the person Noel Richardson. After the

---

<sup>1</sup>Hill v. Lockhart, 474 U.S. 52 (1985); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996).

<sup>2</sup>Strickland v. Washington, 466 U.S. 668, 697 (1984).

<sup>3</sup>See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

altercation I grabbed the money off the dresser and left the residence." Upon further inquiry of the district court, appellant admitted that he had taken or retained the wallet and its contents by force or threat of force. Additionally, the written guilty plea agreement set forth the factual basis for the crime of robbery. Appellant acknowledged reading, signing and understanding the written guilty plea agreement. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to inform the court that appellant maintained his innocence and that the victim could not be found for trial. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant was personally canvassed about his plea of guilty to the crime of robbery. As stated above, appellant admitted the facts supporting the crime of robbery in open court. There is no support in the record for appellant's assertion that the victim would not have been present for trial. Further, appellant benefited by entry of his guilty plea to one count of robbery in that he avoided an additional charge of battery with the use of a deadly weapon. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for leading him to believe that he would receive a concurrent sentence rather than the consecutive sentence that he received. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Appellant affirmatively indicated in the plea canvass that

he understood that sentencing was within the discretion of the district court and that the district court determined whether his sentences would be served concurrently. The written guilty plea agreement further set forth that matters of sentencing were left in the discretion of the district court. In signing the guilty plea agreement, appellant further acknowledged that he was not promised a particular sentence by anyone. Appellant's mere subjective belief as to a potential sentence is insufficient to invalidate his guilty plea as involuntary and unknowing.<sup>4</sup> Therefore, we conclude that the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to discuss and file a notice of appeal from the judgment of conviction. Appellant claimed that his trial counsel "should have taken notice that, his client would want to appeal the 'robbery' conviction and, had a duty to discuss and file Notice of Appeal on his client's behalf to protect his Direct Appeal Rights." In a contradictory fashion, appellant also claimed that his trial counsel advised him that he could not appeal the judgment of conviction because it was based upon a guilty plea. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. The guilty plea agreement correctly informed appellant of his limited right to appeal from the judgment of conviction.<sup>5</sup> Moreover, there is no constitutional requirement that counsel

---

<sup>4</sup>See Rouse v. State, 91 Nev. 677, 541 P.2d 643 (1975).

<sup>5</sup>See Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

must always inform the defendant who pleads guilty of the right to pursue a direct appeal unless the defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.<sup>6</sup> As noted above, appellant's petition contains contradictory claims about whether he discussed a notice of appeal with his counsel, thereby depriving both claims of credibility. Appellant did not specifically allege that he asked counsel to file a direct appeal in this case and that his counsel refused to do so. Further, appellant's attempt at sentencing to distance himself from his factual admission to robbery made during the plea canvass was not sufficient to put his counsel on notice that appellant wanted to appeal his conviction.<sup>7</sup> Nothing in the record suggests that a direct appeal in appellant's case had a reasonable likelihood of success. Under these circumstances, we conclude that the district court did not err in denying this claim.

Finally, appellant appeared to claim that his speedy trial rights were violated. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus

---

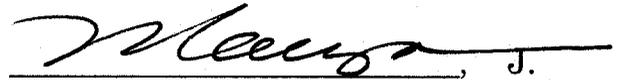
<sup>6</sup>See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis, 115 Nev. at 20, 974 P.2d at 660.

<sup>7</sup>Notably, a claim that a guilty plea was involuntarily or unknowingly entered or that appellant received ineffective assistance of counsel would not ordinarily be permitted on direct appeal. See Fezell v. State, 111 Nev. 1446, 906 P.2d 727 (1995); Bryant v. State, 102 Nev. 268, 721 P.2d 364 (1986).

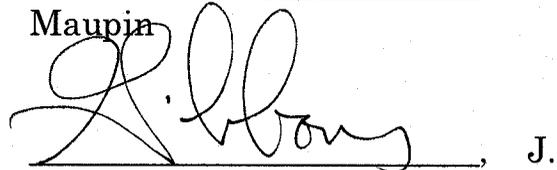
challenging a judgment of conviction based upon a guilty plea.<sup>8</sup> Therefore, we conclude that the district court did not err in denying this claim.

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>9</sup> Accordingly, we

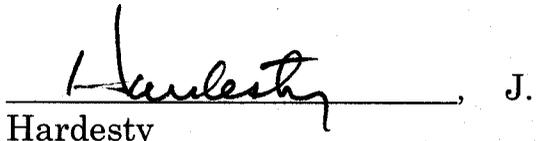
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Donald M. Mosley, District Judge  
Jeffery Dennis Edler  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

---

<sup>8</sup>See NRS 34.810(1)(a).

<sup>9</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).