

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIMON CORDOVA RIOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45959

**FILED**

MAY 19 2006

MANETTE M. BLICKER  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Simon Cordova Rios' post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

On June 12, 2003, Rios was convicted, pursuant to a jury verdict, of one count of robbery. The district court sentenced Rios to serve a prison term of 26-120 months and ordered him to pay \$299 in restitution. Rios did not pursue a direct appeal from the judgment of conviction and sentence.

Rios filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel to represent Rios, and counsel filed a supplement to the petition. The State opposed the petition. The district court conducted an evidentiary hearing, and on August 9, 2005, entered an order denying Rios' petition. This timely appeal followed.

Rios contends that the district court erred by denying his claim that he was improperly deprived of his right to a direct appeal. He

further contends that the district court erred by rejecting his claims that his trial counsel was ineffective by failing to (1) object to the district court's "acquittal first" transitional jury instruction; (2) litigate to preclude and object to the State's presentation of uncharged misconduct; (3) challenge the district court's abuse of discretion at sentencing; and (4) object to the admission of hearsay testimony and Sixth Amendment, Confrontation Clause violations. We disagree.<sup>1</sup>

The district court rejected Rios' assignments of error. The district court found that Rios was not improperly denied his right to a direct appeal and that trial counsel was not ineffective. The district court's factual findings are entitled to deference when reviewed on appeal.<sup>2</sup> Rios has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Rios has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err in denying Rios' petition.

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<sup>1</sup>For the first time on appeal, Rios raises the claim that the Lozada remedy is constitutionally inadequate. See Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994). This court has stated that "[w]here a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal." McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998). Moreover, as the district court correctly found, Rios was not entitled to the Lozada remedy because he was not deprived of his right to appeal.

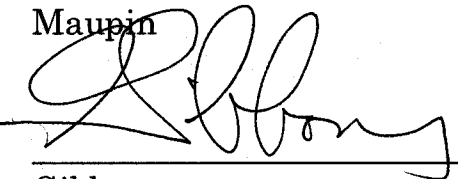
<sup>2</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Having considered Rios' contentions and concluded that they are without merit, we


ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Connie J. Steinheimer, District Judge  
Karla K. Butko  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk