

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELVIS WELLS, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50978

**FILED**

APR 24 2008

TRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Alvarado  
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; Noel E. Manoukian, Judge.

On June 8, 2007, the district court convicted appellant, pursuant to a guilty plea, of one count of conspiracy to commit robbery and one count of robbery with the use of a deadly weapon. The district court sentenced appellant to serve in the Nevada State Prison a term of 24 to 72 months for the conspiracy count and two consecutive terms of 24 to 120 months for the robbery count, the latter terms to be served concurrently with the former term. No direct appeal was taken.

On November 14, 2007, 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 March 11, 2008, the district court denied appellant's petition. This appeal followed.

In his petition, appellant contended that his trial counsel was ineffective for failing to inform him of the right to appeal. Appellant claimed that trial counsel had an obligation to inform him of the right to

appeal, the procedures for an appeal, and the advantages and disadvantages of an appeal. Appellant claimed that the failure to file a direct appeal deprived him of arguing on direct appeal that the aggregate sentence of 4 to 20 years exceeded the statutory maximum permissible for the crime of robbery.

Based upon our review of the record on appeal, we conclude that appellant failed to demonstrate that his trial counsel was ineffective in this regard.<sup>1</sup> There is no constitutional requirement that counsel must inform a defendant who pleads guilty of the right to pursue a direct appeal unless that defendant inquires about an appeal or there exists a direct appeal claim that has a reasonable likelihood of success.<sup>2</sup> In the instant case, appellant did not indicate that he asked trial counsel to file an appeal or otherwise expressed to trial counsel a desire to appeal. Appellant further failed to demonstrate that there was a direct appeal claim that had a reasonable likelihood of success because his claim that his sentence exceeded the statutory maximum was without merit.<sup>3</sup> We further note that appellant received the sentence recommended by the parties in the plea agreement. Finally, the written guilty plea agreement

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<sup>1</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

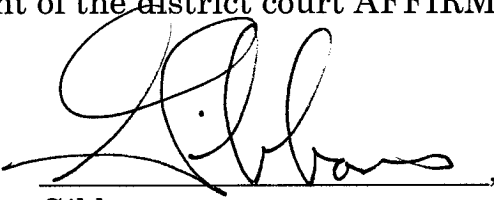
<sup>2</sup>See Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999); see also Roe v. Flores-Ortega, 528 U.S. 470 (2000); Davis v. State, 115 Nev. 17, 974 P.2d 658 (1999).

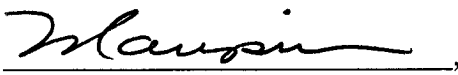
<sup>3</sup>See NRS 200.380(2) (providing for a minimum term of not less than 2 years and a maximum term of not greater than 15 years); 1995 Nev. Stat., ch. 455, § 1, at 1431 (NRS 193.165)(providing for an equal and consecutive term to the primary offense when a deadly weapon is used during the commission of the primary offense).

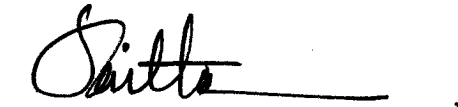
correctly informed appellant of the limited right to appeal his conviction.<sup>4</sup> Therefore, we conclude that the district court did not err in denying this claim.

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>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Saitta

cc: Chief Judge, Eighth Judicial District  
Hon. Noel E. Manoukian, Senior Judge  
Elvis Wells Jr.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>4</sup>See Davis, 115 Nev. at 19, 974 P.2d at 659.

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).