

IN THE SUPREME COURT OF THE STATE OF NEVADA

CECIL R. COGMON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59537

**FILED**

**MAY 09 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; David B. Barker, Judge.

In his petition filed on July 19, 2011,<sup>2</sup> appellant raised two claims for relief: (1) his trial counsel was ineffective for failing to file an appeal despite being requested to do so; and (2) his habitual criminal adjudication was improper because the prior certified judgments of conviction were allegedly not presented to the court. The district court

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<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>2</sup>The district court appointed counsel to represent appellant, Mr. Carl Arnold.

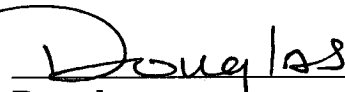
denied the petition without an evidentiary hearing, summarily concluding that counsel was not ineffective and determining that the second claim was procedurally barred pursuant to NRS 34.810.


We affirm the district court's decision to deny the second claim as procedurally barred pursuant to NRS 34.810 because the second claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). Moreover, as a separate and independent ground to deny relief, we conclude that the district court did not err in determining that the record belied this claim.

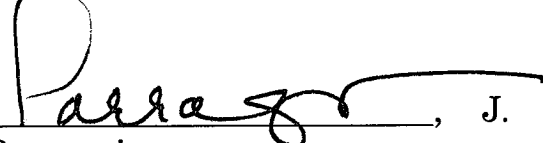
Regarding the ineffective-assistance-of-counsel claim, based upon our review of the record on appeal, we conclude that the district court erred in denying the petition without first conducting an evidentiary hearing on the appeal deprivation claim. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984). Appellant's claim was not belied by the record on appeal, and if true, would have entitled him to relief as counsel is required to file a notice of appeal when a defendant makes a timely request for a direct appeal. See Toston v. State, 127 Nev. \_\_\_, 267 P.3d

795 (2011). Therefore, we reverse the district court's denial of this claim and remand for an evidentiary hearing on the claim.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>4</sup>

 , J.  
Douglas

 , J.  
Gibbons

 , J.  
Parraguirre

cc: Hon. David B. Barker, District Judge  
Carl Arnold  
Cecil R. Cogmon  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>If the district court determines that appellant was deprived of a direct appeal, the district court should provide the remedy set forth in NRAP 4(c).

<sup>4</sup>This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.