

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN TAURIAN DIMARZIO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43717

FILED

DEC 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying appellant Stephen Taurian Dimarzio's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On March 12, 2002, DiMarzio was convicted, pursuant to a guilty plea, of one count of burglary. The district court adjudicated DiMarzio as a habitual criminal and ordered him to serve a prison term of 5 to 20 years to run concurrently with the sentence imposed in an unrelated case. DiMarzio did not file a direct appeal.


On January 21, 2003, DiMarzio filed a proper person post-conviction petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent DiMarzio, and counsel supplemented the petition. After conducting an evidentiary hearing, the district court denied the petition. This appeal followed.

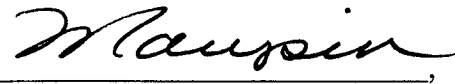
DiMarzio contends that his counsel was ineffective in advising him to plead guilty and recommending that DiMarzio stipulate to a sentence enhancement under the habitual criminal statute because he received "no realistic benefit for the bargain." DiMarzio also contends that his counsel was ineffective at sentencing in: (1) stipulating to DiMarzio's

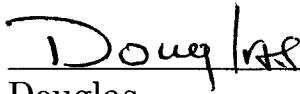
habitual criminal status; (2) failing to object to the presentation of suspect evidence; and (3) failing to investigate and present mitigating evidence. Finally, DiMarzio contends that his counsel was ineffective in failing to preserve DiMarzio's appellate rights, more specifically, the issue of whether the habitual criminal sentencing enhancement was properly applied in his case. In a related argument, DiMarzio contends that his guilty plea is invalid because it was the product of the aforementioned ineffective assistance of counsel.

After conducting an evidentiary hearing, the district court found that counsel was not ineffective and that DiMarzio's guilty plea was knowing and voluntary. The district court's factual findings are entitled to deference when reviewed on appeal.<sup>1</sup> DiMarzio has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, DiMarzio has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Douglas

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<sup>1</sup>See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

cc: Hon. Steven P. Elliott, District Judge  
Karla K. Butko  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk