

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES BRICE WEIKEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43950

FILED

JUN 02 2005

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant James Brice Weikel's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

On July 27, 2001, Weikel was convicted, pursuant to a guilty plea, of one count of causing the death of another by driving a vehicle while intoxicated. The district court sentenced Weikel to serve a prison term of 72-180 months, and ordered him to pay a fine of \$5,000.00 and restitution in the amount of \$26,839.57. Weikel did not pursue a direct appeal from the judgment of conviction and sentence.

On July 26, 2002, Weikel filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition and filed a motion to dismiss the petition. The district court appointed counsel to represent Weikel, and counsel filed a supplement to the petition and an opposition to the State's motion to dismiss. All of the issues raised by Weikel concerned trial counsel's alleged ineffectiveness. The State filed an answer to Weikel's supplemental petition and a motion to dismiss the supplemental petition. Weikel filed an opposition to the State's second motion to dismiss and the State filed a reply to Weikel's opposition. The district court did not

conduct an evidentiary hearing, and on August 10, 2004, entered an order dismissing Weikel's petition. This timely appeal followed.

In his petition and supplemental petitions, Weikel presented numerous claims of ineffective assistance of counsel. On appeal, Weikel contends that counsel was ineffective by not: (1) explaining to him, "in a way that [he] understood," his limited appellate rights, including information about the 30-day notice of appeal period; (2) requesting a "special sentencing setting" in order to fully present evidence in mitigation; (3) moving for a continuance of the sentencing hearing after receiving the presentence investigation report "only a short time prior" to the hearing; (4) pursuing his "[d]efense of [c]hoice at [s]entencing," specifically, calling to testify "all available character and/or family witnesses" in mitigation; (5) preparing Weikel to testify on his own behalf at the sentencing hearing; (6) adequately preparing Weikel's "numerous character and/or family witnesses" so that that they may testify at the sentencing hearing; and (7) adequately preparing his brother-in-law, who did testify on Weikel's behalf at the sentencing hearing, thus causing the witness' poor performance. Weikel also raises five additional claims of ineffective assistance of counsel, however, the claims contain no factual allegations whatsoever and consist entirely of conclusory heading captions.

The district court dismissed Weikel's petition and supplemental petition without conducting an evidentiary hearing. The district court concluded that Weikel was not entitled to an evidentiary hearing, and that his numerous claims were either belied by the record or not alleged with sufficient specificity as required by Hargrove v. State.¹


¹100 Nev. 498, 686 P.2d 222 (1984).

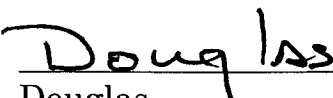
On appeal, Weikel does not, in any way, address the district court's findings of fact and conclusions of law dismissing his petition.


The district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal.² We conclude that Weikel has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Weikel has not demonstrated that the district court erred as a matter of law in refusing to conduct an evidentiary hearing.

Accordingly, having considered Weikel's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Second Judicial District Court Dept. 9, District Judge
Carter R. King
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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