

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY GLENN NOE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45356

FILED

OCT 24 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruband*
DEPUTY CLERK

This is an appeal from an order of the district court denying appellant's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. Appellant was originally convicted, pursuant to a guilty plea, of one count of attempted grand larceny of a motor vehicle, and adjudicated a habitual criminal. The district court sentenced appellant to a prison term of 96 to 240 months.

Appellant filed a proper person post-conviction petition, and the district court appointed counsel to supplement the petition. The district court subsequently denied the petition without conducting an evidentiary hearing.

In the petition, appellant claimed that counsel should have presented mitigating evidence at sentencing. The district court found that appellant had failed to establish prejudice and that counsel was not ineffective.¹ The district court's factual findings regarding a claim of

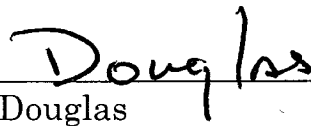
¹See Strickland v. Washington, 466 U.S. 668, 687 (1984); accord Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984) (to state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance fell

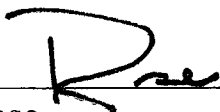
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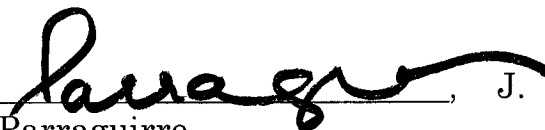
ineffective assistance of counsel are entitled to deference when reviewed on appeal.² Appellant has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, appellant has not demonstrated that the district court erred as a matter of law.

Accordingly, we conclude that the district court did not err by denying the petition and we

ORDER the judgment of the district court AFFIRMED.

 J.
Douglas

 J.
Rose

 J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Scott W. Edwards
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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below an objective standard of reasonableness, and that counsel's deficient performance prejudiced the defense).

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