

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD LINAMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45459

**FILED**

APR 10 2006

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Donald Linaman pled guilty to lewdness with a child under the age of fourteen years and was sentenced to life in prison with parole eligibility after 10 years.

Linaman's sole issue on appeal is that the district court erred in dismissing his petition without conducting an evidentiary hearing on his claims that counsel was ineffective for not presenting an alcohol evaluation and thirty years of military records.

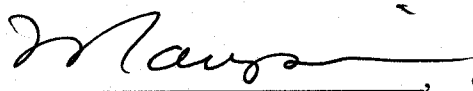
"A defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record."<sup>1</sup> The record belies Linaman's claims. Linaman's counsel did submit reports to the district court indicating their opinion as to Linaman's risk of reoffending as well as his substance abuse issues. The record also indicates the district court considered those reports prior to announcing sentence. Additionally, Linaman made no showing how a

<sup>1</sup>Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984).


separate alcohol assessment would have had any impact on his sentence or how he was prejudiced without it. A petitioner for post-conviction relief cannot rely on conclusory claims for relief.<sup>2</sup>

The record also reveals the district court was aware of Linaman's military service at sentencing pursuant to his presentence report. This court has consistently stated that a habeas petitioner "is not entitled to an evidentiary hearing if the factual allegations are belied or repelled by the record."<sup>3</sup> Therefore we,

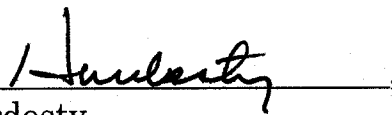
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Connie J. Steinheimer, District Judge  
Mary Lou Wilson  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>2</sup>Evans v. State, 117 Nev. 609, 621, 28 P.3d 498, 507 (2001).

<sup>3</sup>Thomas v. State, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).