

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALAN DAVIDSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45853

**FILED**

**MAR 16 2006**

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Robert Alan Davidson's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

The district court convicted Davidson, pursuant to a guilty plea, of obtaining and/or using the personal identification information of another. The district court sentenced Davidson to serve a prison term of 48 to 240 months. This court affirmed the judgment of conviction on direct appeal.<sup>1</sup>

Davidson filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, who filed a supplemental petition. After conducting an evidentiary hearing, the district court denied the petition. This appeal follows.

Davidson claims that the district court erred in finding that counsel was effective. He contends that counsel was ineffective for failing

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<sup>1</sup>Davidson v. State, Docket No. 42482 (Order of Affirmance, May 6, 2004).

to present mitigating evidence at sentencing. In particular, he asserts that counsel should have presented his mother's testimony. We disagree.

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 below an objective standard of reasonableness.<sup>2</sup> A petitioner must further establish a reasonable probability that, in the absence of counsel's errors, the results of the proceedings would have been different.<sup>3</sup> The court can dispose of a claim if the petitioner makes an insufficient showing on either prong.<sup>4</sup>

Even assuming that counsel was deficient for failing to present mitigating evidence,<sup>5</sup> Davidson failed to demonstrate that the results of the sentencing hearing would have been different. During the evidentiary hearing, Davidson's mother, Galena Linn, testified that Davidson was 14 months old when his father was killed, he was two and half years old when his mother remarried, and he was 10 or 11 years old when his stepfather moved away. Davidson's stepfather taught him right from wrong and held him accountable for his actions. After he left, Davidson began doing poorly in school and getting into trouble. More recently, while Davidson was incarcerated for an unrelated crime, his 10-year-old stepson committed suicide. Davidson blamed himself for the boy's death. Linn stated Davidson had decent family support and that his

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<sup>2</sup>See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

<sup>3</sup>Id.

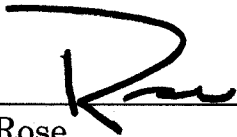
<sup>4</sup>Strickland, 466 U.S. at 697.

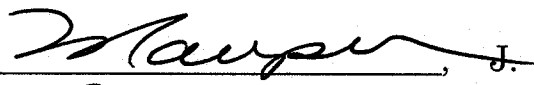
<sup>5</sup>See Brown v. State, 110 Nev. 846, 851, 877 P.2d 1071, 1074 (1994).

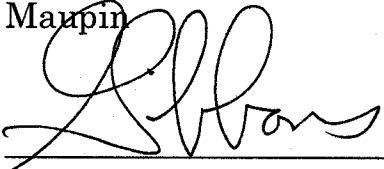
supervisor at Marathon Welding said that he would gladly take Davidson back if he straightened out his life.

The district court was unable to find that a different result would have occurred had this testimony been presented at sentencing. Based on our review of the record, we conclude that the district court's finding is supported by substantial evidence and is not clearly wrong.<sup>6</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Robert H. Perry, District Judge  
Hardy & Associates  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>6</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).