

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY RAY COLT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48322

**FILED**

**JAN 09 2007**

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Randy Ray Colt's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

The district court convicted Colt, pursuant to a guilty plea, of two counts of burglary. The district court sentenced Colt to serve two consecutive prison terms of 36 to 90 months. Colt did not file a direct appeal.

Colt filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent Colt, and counsel supplemented Colt's petition. The State answered and moved to partially dismiss the petition. The district court entered an interim order dismissing some of the petition's claims, conducted an evidentiary hearing on the remaining claims, and entered a final order denying Colt's petition. This appeal follows.

In his petition, Colt claimed that counsel was ineffective for failing to submit the results of his substance abuse evaluation and his

letter of acceptance into a Salvation Army treatment program as mitigating evidence, and for failing to file an appeal despite his request that she do so.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance.<sup>1</sup> The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.<sup>2</sup> A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.<sup>3</sup> The district court's factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal.<sup>4</sup>

Here, both Colt and his trial counsel testified at the evidentiary hearing. The district court found that Colt's testimony was incredible and that he failed to persuade the court of the truth of his

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<sup>1</sup>Kirksey v. State, 122 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

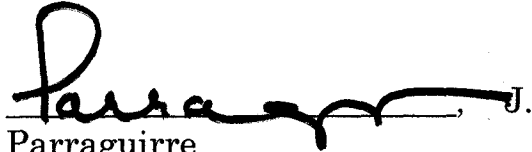
<sup>2</sup>See Strickland, 466 U.S. at 697.

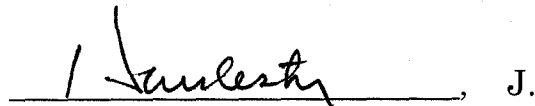
<sup>3</sup>Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).


<sup>4</sup>Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

allegations. We defer to the district court's evaluation of Colt's credibility and conclude that it did not err in denying his petition.<sup>5</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre

  
Hardesty

  
Saitta

cc: Hon. Jerome Polaha, District Judge  
Nathalie Huynh  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>5</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981) (it is for trier of fact to weigh evidence and determine credibility of witnesses).