

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH LAFONTAINE A/K/A JOSEPH
FRANCIS LAFONTAINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48713

FILED

MAR 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Joseph LaFontaine's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

On June 22, 2001, the district court convicted LaFontaine, pursuant to a guilty plea, of one count of first-degree murder with the use of a firearm. The district court sentenced LaFontaine to a prison term of life without the possibility of parole and an equal and consecutive term for the use of a firearm. We affirmed the judgment of conviction.¹

On March 20, 2002, LaFontaine filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent LaFontaine, and counsel filed a supplement to LaFontaine's petition. The State moved for a partial

¹LaFontaine v. State, Docket No. 38162 (Order of Affirmance, March 14, 2002).

dismissal of the supplement to LaFontaine's petition, LaFontaine did not oppose the State's motion, and the district court granted the motion. Thereafter, the district court conducted an evidentiary hearing on LaFontaine's remaining claims, entered findings of fact and conclusions of law, and ordered LaFontaine's post-conviction petition for a writ of habeas corpus denied. This appeal follows.

LaFontaine claims that the district court erred by concluding that he did not receive ineffective assistance of counsel. 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.² To show prejudice, a petitioner who has entered a guilty plea must demonstrate "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."³ The court need not consider both prongs of this test if the petitioner makes an insufficient showing on either prong.⁴ A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence.⁵ The

²Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)).

³Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)).

⁴See Strickland, 466 U.S. at 697.

⁵Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

district court's factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁶

LaFontaine specifically contends that the district court erred by "concluding that [his] proposed defenses of voluntary intoxication and accident were different and amounted to a 'failure to advance one reasonable defense at all.' The two proffered defenses are not incompatible and it was ineffective of trial counsel to reject them and coerce [him] into a guilty plea."

The district court found that counsel rendered effective assistance and that her advice to LaFontaine to enter a guilty plea was reasonable, given the overwhelming evidence against LaFontaine, his inconsistent explanations as to how the victim was killed, and his statements to others that he intended to kill the victim because she provided information to the police that he had committed crimes.

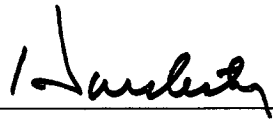
We note that defense counsel testified that she investigated LaFontaine's claims that he was intoxicated and the shooting was an accident, she concluded that they would not provide a credible defense to first-degree murder, and she informed LaFontaine of her conclusion. Counsel further testified that the State's case was strong, LaFontaine's explanations for what happened were inconsistent, and LaFontaine would not be a credible witness at trial. Based on this testimony, we conclude

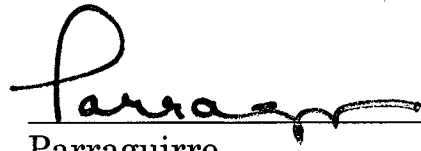
⁶Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


that the district court's finding is supported by substantial evidence and is not clearly wrong.

Having considered LaFontaine's contention and concluded that it is without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Brent T. Adams, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk