

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALVIN AMERICO BRESCIANI,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING,
Respondent.

No. 48759

FILED

APR 27 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

No. 48760

BY *J. S. ...*
CHIEF DEPUTY CLERK

ALVIN AMERICO BRESCIANI,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING,
Respondent.

No. 48761

ALVIN AMERICO BRESCIANI,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING,
Respondent.

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court denying appellant Alvin Americo Bresciani's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Pursuant to plea agreements in three different cases, the district court convicted Bresciani of one count each of burglary, trafficking in a controlled substance, and obtaining and/or using the personal identification information of another. The district court sentenced Bresciani to serve a prison term of 16 to 72 months for burglary, a

concurrent prison term of 26 to 120 months for trafficking, and a consecutive prison term of 36 to 240 months for identity theft. We affirmed the judgments of conviction for trafficking and identity theft on direct appeal.¹

Bresciani subsequently filed a timely proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel, Bresciani retained and substituted counsel, and retained counsel supplemented Bresciani's petition. The State moved to dismiss the petition, Bresciani opposed the motion, and the State replied. The district court denied Bresciani's petition. This appeal follows.

Bresciani contends that the district court abused its discretion when it summarily dismissed his post-conviction petition for a writ of habeas corpus. However, our review of the record reveals that the district court reached the merits of Bresciani's claim of ineffective assistance of counsel. It considered all the papers and pleadings filed by the parties, found that there was no evidence that Bresciani suffered any prejudice as a result of his counsel's representation, and concluded that counsel was not ineffective. Under these circumstances, we conclude that the district court did not err in denying Bresciani's petition without the benefit of an evidentiary hearing.

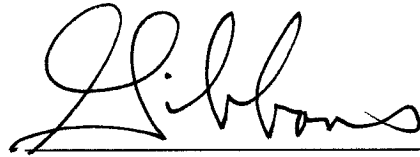
The district court's factual findings are entitled to deference when reviewed on appeal.² In his appeal, Bresciani has not demonstrated

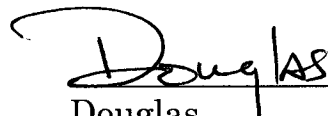
¹Bresciani v. State, Docket Nos. 45179, 45181, and 45182 (Order of Affirmance, September 23, 2005).

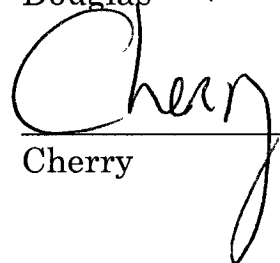
²See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

or alleged that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Nor has he shown or claimed that the district court erred as a matter of law. Accordingly, we conclude that the district court did not err in denying Bresciani's petition, and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Steven R. Kosach, District Judge
Richard F. Cornell
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk