

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCISO TORRES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50698

FILED

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On September 9, 2005, appellant Narciso Torres was convicted, pursuant to a jury verdict, of two counts of trafficking in a controlled substance. The district court sentenced Torres to serve two consecutive prison terms of 10 to 25 years. Torres filed a direct appeal, and this court affirmed the judgment of conviction.¹

On May 1, 2006, Torres filed a proper person post-conviction petition and supplemental petition for a writ of habeas corpus. The State opposed the petition. The district court appointed counsel to represent Torres. After conducting an evidentiary hearing, the district court denied the petition. Torres filed this timely appeal.

¹Torres v. State, Docket No. 45982 (Order of Affirmance, March 27, 2006).

Torres contends that the district court erred in rejecting his claims of ineffective assistance of counsel. Specifically, Torres argues that trial counsel was ineffective for failing to: (1) adequately investigate; (2) have the controlled substances independently tested; (3) vigorously cross-examine the State's confidential informant; and (4) offer a lesser-included offense jury instruction.²

The district court found that counsel was not ineffective under the standard set forth in Strickland v. Washington.³ The district court's factual findings regarding claims of ineffective assistance of counsel are entitled to deference when reviewed on appeal.⁴ Torres has not demonstrated that the district court's findings of fact are not supported by substantial evidence or are clearly wrong. Moreover, Torres has not demonstrated that the district court erred as a matter of law.⁵

²Torres also argues that the sentence imposed constitutes cruel and unusual punishment and is disproportionate to his co-defendant's sentence. We conclude that Torres has waived this issue by failing to raise it in a direct appeal from the judgment of conviction. See NRS 34.810(1)(a); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled in part on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

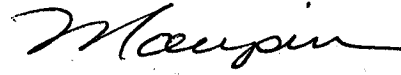
³466 U.S. 668 (1984).

⁴See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

⁵See id. at 648-49, 878 P.2d at 279.

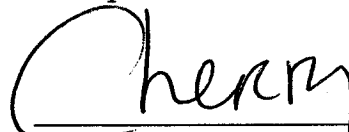
Having considered Torres' contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



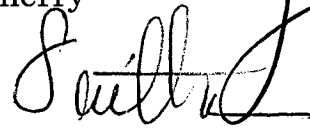
Maupin

J.



Cherry

J.



Saitta

J.

cc: Hon. Connie J. Steinheimer, District Judge
Kay Ellen Armstrong
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk