IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAK JACOBUS KRUGER A/K/A CODY
KRUGER,
Appellant,
   vs.
THE STATE OF NEVADA,
Respondent.

No. 51041

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Isak Jacobus Kruger's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On July 25, 2006, the district court convicted Kruger, pursuant to a guilty plea, of three counts of securities fraud against a person 60 years of age or older, one count of securities fraud, and one count of sale of an unregistered security to a person 60 years of age or older. The district court sentenced Kruger to serve various concurrent and consecutive prison terms amounting to 36 to 144 months. Kruger did not file a direct appeal.

On July 3, 2007, Kruger filed a proper person post-conviction petition for a writ of habeas corpus in the district court. Kruger retained counsel, and counsel filed a supplement to Kruger's petition. The State filed a response, the district court conducted an evidentiary hearing, and the district court denied Kruger's petition. This appeal followed.

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Kruger contends that the district court erred by denying his petition for a writ of habeas corpus. Kruger specifically claims that defense counsel was ineffective for failing to properly prepare for trial. Kruger asserts "that, had [defense counsel] been prepared for trial, [he] would not have entered into the plea agreement."
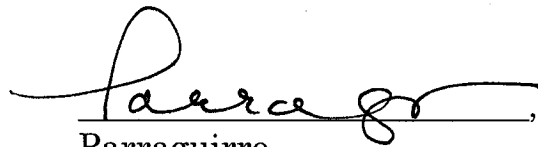
To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction, a petitioner must demonstrate that counsel's performance was deficient, and that the petitioner was prejudiced by counsel's performance. Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (citing Strickland v. Washington, 466 U.S. 668, 687 (1987)). 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.'" Id. at 988, 923 P.2d at 1107 (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985) (emphasis omitted)). A petitioner must demonstrate the factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). The district court's factual findings regarding ineffective assistance of counsel are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).
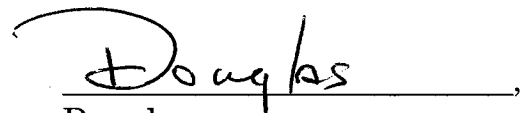
Here, the district court conducted an evidentiary hearing on Kruger's claims of ineffective assistance of counsel. The district court heard testimony from Kruger's defense counsel, the prosecutor, and Kruger himself. The district court determined that the issue was not whether defense counsel could have done a better job, but rather whether the outcome would have been different if defense counsel was more prepared. The district court found that Kruger failed to meet his burden
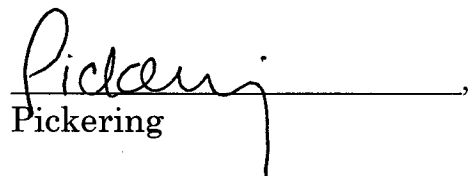
to show that defense counsel's representation was ineffective; Kruger signed his guilty plea agreement freely and voluntarily; and, "although [defense] counsel testified that he could have done a better job of representing defendant Kruger, no showing was made that the representation was ineffective or that the outcome would have been different."

Kruger has not demonstrated that the district court's findings are not supported by substantial evidence or are clearly wrong. Nor has he shown that the district court erred as a matter of law. Accordingly, we conclude that Kruger has failed to demonstrate that the district court erred in dismissing his petition and we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
      Herbert Sachs
      Attorney General Catherine Cortez Masto/Carson City
      Attorney General Catherine Cortez Masto/Las Vegas
      Eighth District Court Clerk