

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC JON NEES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52781

FILED

FEB 03 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Eric Jon Nees' timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

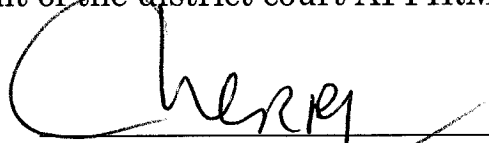
Nees contends that trial counsel was ineffective for advising him not to testify when he had an affirmative defense of duress and that the district court abused its discretion by denying this ineffective assistance of counsel claim without the benefit of an evidentiary hearing. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that the record indicated that trial counsel sufficiently advised Nees of the pros and cons of testifying. The district court's finding is supported by substantial evidence and is not clearly wrong, and Nees has not demonstrated that the district court erred as a matter of law. Further, we conclude Nees was not entitled to an evidentiary hearing because his

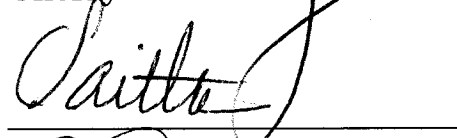
claim was contradicted by the record that existed when he made the claim. See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).


Nees also contends that the trial court erred by failing to inquire into his dissatisfaction with trial counsel and that the district court abused its discretion by denying this claim without the benefit of an evidentiary hearing. However, this claim could have been raised on direct appeal and Nees failed to demonstrate good cause for failing to raise the issue on direct appeal and prejudice. NRS 34.810(1)(b)(2). Therefore, the district court did not err by denying this claim. Id.

Having considered Nees' contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

¹We have reviewed all documents that Nees has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that Nees claims that NRAP 46(b) is unconstitutional, his claim lacks merit because he has no right to represent himself on appeal. See, e.g., Blandino v. State, 112 Nev. 352, 354, 914 P.2d 624, 626 (1996).

cc: Hon. Patrick Flanagan, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk
Eric Nees