

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ANTHONY BENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52937

FILED

MAR 11 2010

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

ORDER OF AFFIRMANCE

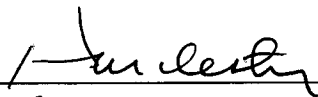
This is an appeal from a district court order dismissing appellant Robert Anthony Benson's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

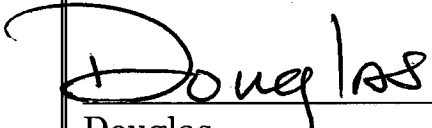
Benson contends that the district court abused its discretion by finding that trial counsel was not ineffective for failing to (1) move to sever his trial from his codefendant's; (2) file a motion to dismiss based on a speedy trial right violation; and (3) present exculpatory evidence. Benson also contends that appellate counsel was ineffective for failing to argue that (1) his right to be present during all phases of the jury selection was violated, and (2) his right to a speedy trial was violated. Finally, Benson contends the district court erred by failing to conduct an evidentiary hearing before dismissing claims that trial counsel was ineffective for failing to (1) move for a dismissal based on prosecutorial misconduct during the grand jury proceedings; (2) call him to testify; (3) adequately investigate his case; (4) make an opening statement; and (5) present mitigation evidence at sentencing. We disagree.


When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are 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 trial counsel was not deficient and that Benson failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel). The district court also found that appellate counsel was not ineffective and that Benson's claims did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Finally, the district court found that Benson's remaining claims did not warrant an evidentiary hearing because they were either repelled by the record or not pleaded with the requisite factual specificity. See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). The district court's findings are supported by substantial evidence and are not clearly wrong, and Benson has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that Benson is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

¹Benson also contends that cumulative error denied him his right to a fair trial. Because Benson has failed to demonstrate any error, we reject his contention. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

cc: Hon. Steven R. Kosach, District Judge
Eric W. Lerude
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk