

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE VALENTIN MORA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53135

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 Jose Valentin Mora's timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Mora contends that the district court abused its discretion by failing to conduct an evidentiary hearing before dismissing his petition based, in part, on claims that trial counsel was ineffective for advising him to plead guilty and appellate counsel was ineffective for failing to raise issues related to his conflict with trial counsel on direct appeal. We disagree.

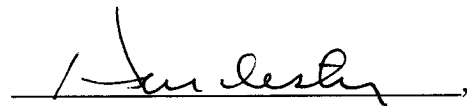
When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that Mora's claim regarding trial counsel's alleged plea advisement was "conclusory" and that the record indicated that counsel was not ineffective. See Strickland v. Washington, 466 U.S. 668, 687-88

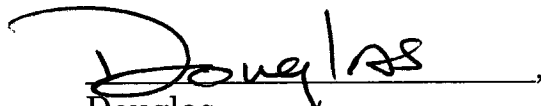
(1984) (establishing two-part test for ineffective assistance of counsel). The district court also found that appellate counsel was not ineffective and our review of the record indicates that the claims relating to Mora's conflict with trial counsel did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and Mora has not demonstrated that the district court erred as a matter of law. Further, we conclude that Mora was not entitled to an evidentiary hearing because his claims were repelled by the record. See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

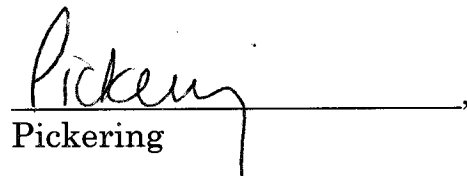
To the extent that Mora contends the district court erred by failing to inquire into his alleged conflict with counsel, we note that this claim was waived because he should have raised the issue on direct appeal. Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999).

Therefore, we conclude that Mora is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.


Hardesty, J.


Douglas, J.


Pickering, J.

cc: Hon. Steven P. Elliott, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk