

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRY DENHAM BOYES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53145

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Terry Boyes' timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

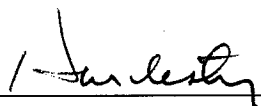
Boyes contends that the district court abused its discretion by finding that his counsel was not ineffective and by denying his petition. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if supported by substantial evidence 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).

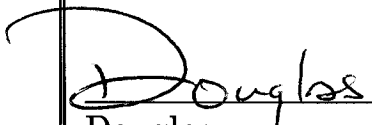
Boyes contended that sentencing counsel was ineffective for failing to (1) object to letters and articles filed in support of the victims at sentencing and (2) cross-examine witnesses during sentencing. The district court found that counsel's performance did not fall below a reasonable standard and/or Boyes suffered no prejudice. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel). We conclude that the district court did not abuse its discretion by denying these claims because Boyes did not


allege any prejudice and Boyes cannot demonstrate that he would have received a more lenient sentence but for counsel's omissions. See Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004).

Boyes further contended that appellate counsel was ineffective for failing to (1) challenge the prosecutor's hearsay statements during sentencing and (2) address a conflict of interest between Boyes and his sentencing counsel. Although the district court addressed these claims as if they were claims of ineffective assistance of trial counsel and some of its factual findings are not supported by substantial evidence, we conclude that no relief is warranted because the record indicates that the underlying claims did not have a reasonable probability of success on appeal. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court may affirm a district court decision that reaches the correct result for the wrong reason); Strickland, 466 U.S. at 687; Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying Strickland test to claims of ineffective assistance of appellate counsel). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

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