

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER JOSEPH MUNOZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53259

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 denying appellant's timely, first post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant Peter Joseph Munoz, Jr., contends that the district court abused its discretion by denying his petition based on claims that counsel was ineffective for failing to (1) pursue a direct appeal, (2) investigate the victim's alleged recantation, (3) compel the victim to submit to an independent psychological evaluation, and (4) advise him that he would be subject to lifetime supervision. Munoz also contends that the district court abused its discretion by rejecting his actual-innocence claim. 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). The district court conducted an extensive evidentiary hearing and found

that Munoz did not receive ineffective assistance of counsel, was not improperly deprived of a direct appeal, and entered his guilty plea freely, voluntarily, and knowingly. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (applying Strickland test to judgments of conviction based on guilty pleas); Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). The district court also rejected Munoz's actual-innocence claim. See Calderon v. Thompson, 523 U.S. 538, 559 (1998) (a successful actual-innocence claim must demonstrate that "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence" (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995))). The district court's findings of fact are supported by substantial evidence and are not clearly wrong. Moreover, Munoz has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that Munoz is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Draskovich & Oronoz, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk