

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOMAS GRANADOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53394

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 Tomas Granados' timely, first post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Granados contends that the district court abused its discretion by finding that trial counsel was not ineffective at sentencing for failing to (1) present mitigating evidence; (2) object to the State's breach of the plea agreement; and (3) object to the presentence investigation report and the court's consideration of a psychological evaluation. Granados also contends that appellate counsel was ineffective for failing to challenge (1) the breach of the plea agreement; (2) the admission of suspect evidence at sentencing; (3) codefendant's counsel being provided with Granados' psychological evaluation; and (4) the use of "432B evidence" at sentencing without providing copies of the reports to the defense. 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 trial counsel was not deficient and that the State did not breach the plea agreement. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Sullivan v. State, 115 Nev. 383, 389-90, 990 P.2d 1258, 1262 (1999). The district court also found that appellate counsel was not ineffective and our review of the record reveals that Granados' 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). The district court's findings are supported by substantial evidence and are not clearly wrong, and Granados has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that Granados 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. James E. Wilson, District Judge
Karla K. Butko
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk