

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN WAYNE NAPRSTEK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53605

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingosa*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing appellant Brian Wayne Naprstek's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

First, Naprstek makes a general allegation that the district court erred by dismissing his habeas petition, supplemental petition, and second supplemental petition without an evidentiary hearing. "A post-conviction habeas petitioner is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief. However, if the record belies the petitioner's factual allegations, the petitioner is not entitled to an evidentiary hearing." Means v. State, 120 Nev. 1001, 1016, 103 P.3d 25, 35 (2004) (internal quotation marks and footnote omitted). Here, the district court made specific factual findings as to why an evidentiary hearing was unwarranted. These findings are supported by the record, they are not clearly wrong, and they have not been challenged with any specificity. Accordingly, we conclude that Naprstek has not demonstrated that the

district court erred by dismissing his petition without an evidentiary hearing.

Second, Naprstek contends that the district court erred by dismissing his claims that defense counsel was ineffective for failing to cure the defects in the psychosexual evaluation or arrange for a new evaluation and appellate counsel was ineffective for failing to challenge the district court's reliance on the evaluation at sentencing. 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 the comments in the psychosexual evaluation played no role in sentencing." Substantial evidence supports this factual finding and it is not clearly wrong. We conclude that Naprstek has not shown that he was prejudiced by counsels' representation or that the district court erred as a matter of law. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88 & 998, 923 P.2d 1102, 1107 & 1113 (1996). Accordingly, Naprstek has not demonstrated that the district court erred by dismissing these claims.

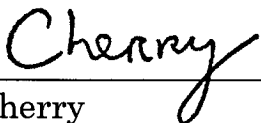
Third, Naprstek contends that the district court erred by dismissing his claim that defense counsel was ineffective for failing to investigate and litigate the facts surrounding his arrest, which he asserts was illegal. The district court found that even if Naprstek's arrest was illegal, his petition does not identify any evidence that was obtained as a result of the illegal arrest, and the illegal arrest does not divest the court

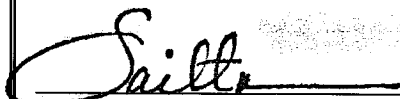
of jurisdiction. Substantial evidence supports this finding and it is not clearly wrong. We conclude that Naprstek has not shown that counsel's representation was deficient or that the district court erred as a matter of law. See United States v. Crews, 445 U.S. 463, 474 (1980) ("An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction."). Accordingly, Naprstek has not demonstrated that the district court erred by dismissing this claim.


Fourth, Naprstek contends that application of the lifetime supervision provisions under NRS 176.0931 is unconstitutional because it violates the constitutional right to travel, and the application of the lifetime supervision conditions under NRS 213.1243, NRS 213.1245, and NRS 213.1255 is unconstitutional because they infringe upon First Amendment rights. However, the specific conditions of lifetime supervision will not be determined until after a hearing conducted just prior to parole or expiration of the term of imprisonment, see Johnson v. State, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007), and we decline to speculate on the effects of conditions not yet defined or that may never materialize, see NRS 213.1243(9); NRS 213.1245(3); NRS 213.1255(4).

Having considered Naprstek's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk