

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY SPANGLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53756

FILED

APR 07 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Gary Spangler's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Spangler contends that trial counsel was ineffective for failing to (1) object to improper comments made by the prosecutor during his closing argument, (2) object to the State's intimidation of a defense witness, (3) limit the inquiry into a defense witness' prior conviction, (4) request a jury instruction on the proper use of evidence regarding his prior felony conviction, and (5) object to the admission of prior bad act evidence. Spangler also contends that appellate counsel was ineffective for failing to argue that (1) the prosecutor committed misconduct during closing arguments and (2) his right to due process and a fair trial was violated by the admission of prior bad act evidence. Notably, Spangler does not specifically address or challenge the district court's findings in denying his petition.

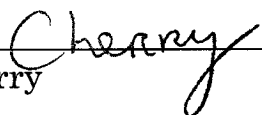
When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly

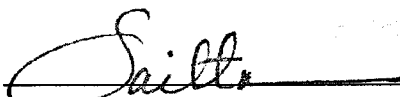
erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that either trial counsel was not deficient or that Spangler failed to demonstrate that he was prejudiced by any perceived deficiencies, especially in light of the overwhelming evidence of his guilt. 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 reveals that Spangler's 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 Spangler has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err by rejecting Spangler's ineffective-assistance claims.


Finally, Spangler argues that "NRAP 3C unconstitutionally chills the right to effective assistance of counsel on direct appeal" because it deprives counsel of adequate payment. As noted above, Spangler failed to demonstrate that appellate counsel was ineffective. Further, NRAP 3C does not require attorneys to work without compensation. See NRAP 3C(b) ("Trial counsel shall . . . adjust their public or private contracts for compensation to accommodate the additional duties imposed by this Rule."). And we have held that NRAP 3C complies with the due process requirements of the state and federal constitutions. Wood v. State, 115 Nev. 344, 352, 990 P.2d 786, 791 (1999). Therefore, the district court did not err by rejecting this claim.

Having considered Spangler's contentions, we conclude that he is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.


Cherry, J.


Saitta, J.


Gibbons, J.

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