

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54095

**FILED**

**MAY 07 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

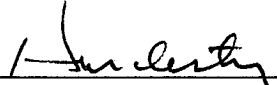
Appellant Robert Holmes, III, challenges the district court's failure to conduct an evidentiary hearing and denial of his presentence motion to withdraw his guilty plea that was based on a claim that his counsel was ineffective for failing to investigate or prepare for trial, informing him that there were no defenses to the charges, and informing him that if he went to trial he would receive more time than he would if he pleaded guilty. We presume that the district court correctly assessed the validity of a plea on a motion to withdraw the plea and will not reverse its decision absent an abuse of discretion. Molina v. State, 120 Nev. 185, 191, 87 P.3d 533, 538 (2004). 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).

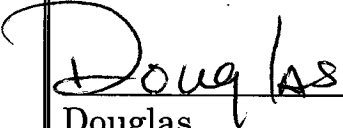
The district court found that Holmes failed to meet his burden to establish prejudice such that he would not have entered a guilty plea.


See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting test in Strickland); Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (burden of proving ineffective assistance is on defendant). The district court's findings are supported by substantial evidence, are not clearly erroneous, and are not incorrect as a matter of law. Further, an evidentiary hearing was not warranted because Holmes' claims were not supported by sufficient factual allegations. See Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not abuse its discretion.

Holmes also argues that the district court abused its discretion by denying his motion to withdraw because the presentence investigation report indicated that he had a prior conviction for burglary and therefore he was misadvised that he was eligible for probation. See NRS 205.060(2); Meyer v. State, 95 Nev. 885, 887, 603 P.2d 1066, 1067 (1979) overruled on other grounds by Little v. Warden, 117 Nev. 845, 34 P.3d 540 (2001). We decline to address this claim because Holmes has failed to provide this court with an adequate record to review the claim. See Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004).

We conclude Holmes is not entitled to relief, and we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Valorie Vega, District Judge  
Sterling Law, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk