

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID ENRIQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54865

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

In his petition filed on May 27, 2009, appellant raised several claims of ineffective assistance of counsel. To prove a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). The court need not address both prongs. Strickland v. Washington, 466 U.S. 668, 697 (1984). A petitioner must demonstrate the

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

facts underlying a claim of ineffective assistance of counsel by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004), and the district court's factual findings regarding a claim of ineffective assistance of counsel are entitled to deference when reviewed on appeal. Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).


First, appellant claimed that his trial counsel was ineffective for promising him a sentence of 2 to 6 years. Appellant failed to demonstrate that he was prejudiced. Appellant was informed in the written guilty plea agreement and the plea canvass of the potential penalties, and he was specifically informed that sentencing decisions were strictly left to the district court. Appellant affirmatively acknowledged at the plea canvass that no one had promised him probation, leniency or special treatment. Trial counsel testified at the evidentiary hearing that he did not tell appellant he would receive a sentence of 2 to 6 years. Substantial evidence supports the district court's finding that trial counsel did not promise appellant a sentence of 2 to 6 years. Therefore, we conclude that the district court did not err in denying this claim.

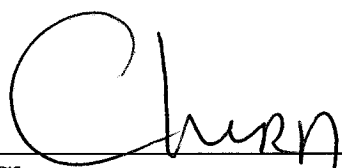
Second, appellant claimed that his trial counsel was ineffective for informing him he would file a motion to withdraw a guilty plea, but failing to do so. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Because appellant's request was made after sentencing, trial counsel did not have a duty to file a post-conviction motion to withdraw a guilty plea. Moreover, appellant's trial counsel testified that he was not asked to file a motion to withdraw a guilty plea, and that in fact, he left the courtroom right after sentencing without having a conversation with appellant. Therefore, the district court did not err in denying this claim.


Third, appellant claimed that his trial counsel was ineffective for failing to argue for drug court. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant was not eligible for a suspended sentence or probation, and thus, he was not eligible for drug court. NRS 453.3385; NRS 453.3405. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his trial counsel was ineffective for failing to file a direct appeal after being requested to do so. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Appellant's trial counsel testified that he was not asked to file a direct appeal. Substantial evidence supports the finding of the district court that trial counsel was not asked to file an appeal. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


Saitta, J.


Cherry, J.


Gibbons, J.

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Jackie Glass, District Judge
David Enriquez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk