

IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY GLENN SELBACH,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING AND THE STATE OF
NEVADA,
Respondents.

No. 55031

FILED

JUN 09 2010

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

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vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, DON
HELLING AND THE STATE OF
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No. 55032

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders denying appellant Jerry Glenn Selbach's post-conviction petitions for writs of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Selbach contends that the district court abused its discretion by finding that trial counsel was not ineffective for failing to (1)

investigate his case and (2) obtain and provide, as mitigation evidence, a psychosexual evaluation for consideration at sentencing. We disagree.

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 trial counsel was not deficient and Selbach failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel). The district court's findings are supported by substantial evidence and not clearly wrong, and Selbach 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 Selbach's ineffective-assistance claims.

Second, Selbach contends that the district court abused its discretion by denying his request to continue the evidentiary hearing in order to have one of his witnesses, the victim, evaluated by a mental health professional after she testified. In denying the request, the district court stated that the witness' "credibility is zero" and that a psychological evaluation was not "pertinent." Additionally, NRS 34.780(2) provides, in part, that a party in a post-conviction proceeding "may invoke any method of discovery available under the Nevada Rules of Civil Procedure." No civil rule, however, vests a district court with discretion to grant a continuance and order the psychological evaluation of a non-party witness.

See NRCP 35(a). Therefore, we conclude that the district court did not abuse its discretion.

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

ORDER the judgments of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Brent T. Adams, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk