

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERTO CARO TORRES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55213

FILED

SEP 29 2010

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Alberto Caro Torres's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Torres contended that he received ineffective assistance of counsel because counsel (1) did not discuss the case at any length before asking him to waive the preliminary hearing, (2) did not conduct an independent investigation, (3) promised that he would get probation if he accepted the plea agreement, (4) stated that he would be released on his own recognizance or reduced bail pending the entry of his plea, (5) misrepresented the sentence that he would receive, (6) did not discuss the terms and consequences of the plea agreement, (7) did not review or discuss the presentence investigation report with him, (8) did not correct or object to inaccuracies in the presentence investigation report, (9) failed to effectively argue for probation or the regimental discipline program, (10) did not consult with him before filing an appeal, (11) did not challenge the validity of his guilty plea on appeal, and (12) did not challenge the prosecutor's charging decision as an abuse of discretion or misconduct.

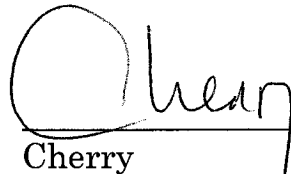
When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court failed to support its denial of Torres's ineffective-assistance claims with any specific findings of fact and conclusions of law. See NRS 34.830(1). Nonetheless, our review of the record reveals that these claims were belied by the record, lacked factual specificity, or failed to demonstrate actual prejudice. 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); Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986) (defendant may not challenge the validity of a guilty plea on direct appeal), superseded by statute on other grounds as stated in Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000); Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984); Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (defendant may not challenge events preceding entry of a guilty plea). We conclude that Torres failed to demonstrate that the district court erred by denying these claims.

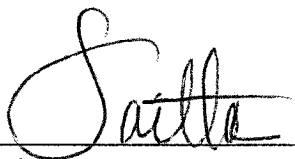
Torres also contended that (1) his guilty plea is invalid because he was not properly advised of the elements of burglary and did not admit to committing acts that constituted burglary, and (2) his due process and equal protection rights were violated when the prosecutor overcharged his criminal conduct. However, the record belies Torres's challenge to the validity of his plea and, as the district court found, his

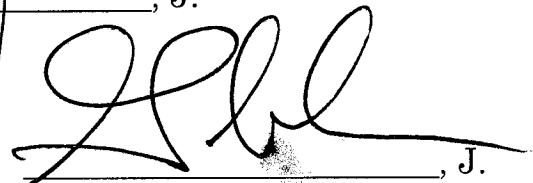
claim of prosecutorial overcharging was not reviewable. See Webb, 91 Nev. at 470, 538 P.2d at 165.

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

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe District Court Clerk
Glynn B. Cartledge
Lori Story
Attorney General/Carson City
Washoe County District Attorney

¹Although we have elected to file the fast track statement submitted, we note that it does not comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2). Torres's counsel, Lori Story, failed to support her factual assertions with citations to the relevant pages in the appendix. Counsel Story is cautioned that failure to comply with the requirements for fast track statements in the future may result in the statement being returned, unfiled, to be correctly prepared, NRAP 32(c), and may also result in the imposition of sanctions by this court, NRAP 3C(n).