

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAURICE RASHADD FITZGERALD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55389

**FILED**

NOV 05 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Maurice Fitzgerald contends that the district court erred by denying his presentence motion to withdraw his guilty plea because counsel was ineffective when he advised Fitzgerald that he was likely to be granted probation. 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 conducted a hearing on Fitzgerald's motion, found that there was no evidence that but for counsel's alleged deficiencies Fitzgerald would not have taken the deal and would have insisted on going to trial, and denied the motion. See Strickland v. Washington, 466

U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Fitzgerald has failed to demonstrate that the district court's finding is not supported by substantial evidence or is clearly erroneous, or that the district court erred as a matter of law. Accordingly, we conclude that Fitzgerald had failed to demonstrate that counsel was ineffective, or that the district court abused its discretion by finding that the guilty plea was knowingly and intelligently entered, and we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Michelle Leavitt, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Sanft Law, P.C.  
Eighth District Court Clerk