

IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE CHRISTOPHER SNURE,
Appellant,
vs.
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS AND THE STATE
OF NEVADA,
Respondents.

No. 55390

FILED

SEP 10 2010

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

ORDER OF AFFIRMANCE

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

In his petition, filed on September 13, 2006, appellant raised several claims of ineffective assistance of trial counsel, only two of which were raised on appeal.¹ To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) 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). Both components of the inquiry must be shown. Strickland v. Washington, 466

¹Appellant's remaining claims are therefore abandoned.

U.S. 668, 697 (1984). The petitioner had the burden at his evidentiary hearing of establishing the facts underlying his claims by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). This court will defer to the district court's factual findings if supported by substantial evidence and not clearly erroneous, but it reviews the district court's application of the law to those facts de novo. See Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Appellant argues that counsel was ineffective for failing to move to suppress his confession to police. Appellant fails to demonstrate prejudice. To demonstrate prejudice, appellant must first demonstrate that his suppression claim has merit. Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996) (citing Kimmelman v. Morrison, 477 U.S. 365, 375 (1986)). Appellant alleges the presence of only one of the six factors this court applies in determining the voluntariness of a confession (prolonged questioning), see id. at 991, 923 P.2d at 1109, but presents no evidence that supports his claim. Appellant therefore has not demonstrated by a preponderance of the evidence that a motion to suppress his confession would have been successful and, accordingly, fails to demonstrate a reasonable probability that, but for counsel not filing the motion, he would not have pleaded guilty and would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

Appellant also argues that counsel was ineffective for failing to conduct an adequate investigation into his three possible defenses. Appellant fails to demonstrate deficiency or prejudice. Counsel testified that he discussed one of the defenses with appellant, that appellant did not mention the other two, and that appellant was adamant about

entering a plea so as to avoid prosecution on additional charges. The district court specifically found appellant's testimony to the contrary to be incredible and generally found counsel's testimony to be credible. Thus, appellant has not demonstrated by a preponderance of the evidence that counsel was deficient in not further investigating his defenses. Moreover, appellant has failed to demonstrate what additional evidence would have resulted from further investigation. Thus, appellant has not demonstrated a reasonable probability that, but for counsel not investigating further, he would not have pleaded guilty but would have insisted on going to trial. We therefore conclude that the district court did not err in denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

K Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Steven R. Kosach, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk