

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO OCHOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55487

**FILED**

DEC 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
*Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Ricardo Ochoa's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Ochoa contends that the district court erred by denying his claims that trial counsel was ineffective for failing to file a direct appeal and provide Ochoa with an interpreter, and informing Ochoa that he would receive probation or concurrent sentences.<sup>1</sup>

When reviewing the district court's resolution of ineffective-assistance claims, 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). During the evidentiary

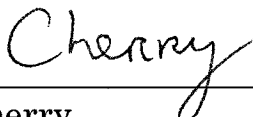
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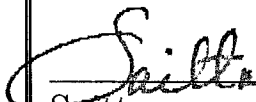
<sup>1</sup>To the extent Ochoa claims that counsel was ineffective for failing to challenge one of the robbery counts as factually incorrect and inform him of his right to an appeal, these claims were not raised below, and we decline to address them here in the first instance. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).


hearings, the district court stated that it was clear that Ochoa did not ask his counsel to file an appeal. In its written order, the district court determined that Ochoa spoke sufficient English to understand the guilty plea and its consequences, he understood the possible sentence as a result of the plea, and was not promised probation.

Our review of the record reveals that the district court's findings are supported by substantial evidence and are not clearly erroneous, and the district court did not err as a matter of law. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for evaluating ineffective-assistance-of-counsel claims); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (applying Strickland to claims of ineffective assistance of counsel where a defendant has pleaded guilty). Accordingly, we conclude that Ochoa has failed to demonstrate that the district court erred by denying his petition, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Jennifer Togliatti, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Law Offices of Al Lasso, LLC  
Eighth District Court Clerk