

IN THE SUPREME COURT OF THE STATE OF NEVADA

CONRADO BAYLON FIEL,
Appellant,
vs.
WARDEN, ELY STATE PRISON, E.K.
MCDANIEL,
Respondent.

No. 55678

FILED

APR 06 2011

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 Conrado Fiel's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

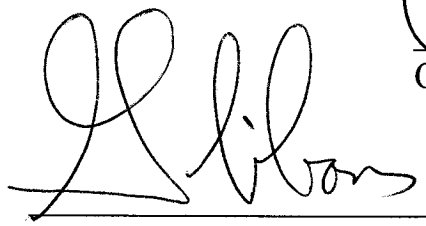
Fiel was convicted of first-degree murder with the use of a deadly weapon for killing a neighbor. Following affirmance of his conviction on direct appeal, Fiel filed a timely post-conviction petition in the district court, which the district court denied following an evidentiary hearing. He now argues that the district court erred in rejecting his multiple claims of ineffective assistance of trial counsel. To prove such a claim, Fiel must demonstrate (1) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) prejudice in that counsel's errors were so severe that they rendered the jury's verdict unreliable. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Additionally, this court will defer to the district court's factual findings if supported by substantial evidence and not clearly erroneous. See Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

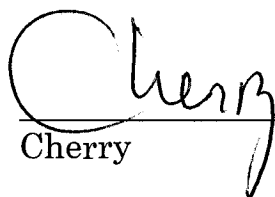
First, Fiel claims that his counsel was ineffective for failing to have Fiel testify at trial. Fiel fails to demonstrate that counsel's performance was deficient or that he was prejudiced. Fiel acknowledged at the evidentiary hearing that he declined to testify because he was scared for his family's safety and further stated that he would not have testified under any circumstances. Additionally, the district court found him to be an incredible witness and concluded that even if counsel had advised Fiel to testify at trial and Fiel did so, the result would have been the same. We agree and conclude that the district court did not err in denying this claim.


Second, Fiel claims that his counsel insufficiently investigated his case, which resulted in (1) counsel's failure to present evidence that he killed the victim in defense of others and (2) counsel's failure to impeach the eyewitness with a felony conviction. Fiel was granted an evidentiary hearing on these claims but presented no supporting evidence beyond his own incredible testimony and that of his family. He therefore failed to demonstrate that counsel's performance was deficient or that he was prejudiced. Accordingly, the district court did not err in rejecting this claim.

Having considered Fiel's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Pickering

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko, Esq.
Washoe County District Attorney
Washoe District Court Clerk