

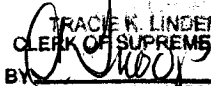
IN THE SUPREME COURT OF THE STATE OF NEVADA

IVAN SALAZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55739

FILED

DEC 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

In his petition filed on October 21, 2009, appellant claimed that he received ineffective assistance of trial counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and 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,

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district court's factual findings regarding ineffective assistance of counsel 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).

First, appellant claimed that his trial counsel was ineffective for failing to investigate witnesses. Appellant failed to demonstrate that he was prejudiced. Appellant did not identify any witnesses counsel should have investigated and made only a bare and naked claim that his counsel was ineffective in this area. Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his trial counsel was ineffective for failing to ensure that appellant entered a knowing and voluntary plea. Appellant failed to demonstrate that he was prejudiced. Appellant acknowledged in the guilty plea agreement and again at the plea canvass that he was entering his plea freely and voluntarily, and that he understood the possible range of sentences to which he could be subjected. Therefore, appellant failed to demonstrate that the district court erred in denying this claim.

Third, appellant claimed that his trial counsel was ineffective for assuring him that he would receive concurrent sentences. Appellant

failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At the evidentiary hearing, counsel testified that he did not guarantee that appellant would receive concurrent sentences. In addition, appellant was informed in the guilty plea agreement and at the plea canvass that the district court alone decides the sentence to be imposed. Therefore, we conclude that substantial evidence supports the district court's decision to deny this claim.

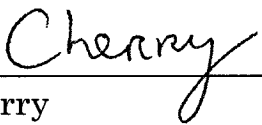
Fourth, appellant claimed that his trial counsel was ineffective for failing to discuss the Presentence Investigation Report (PSI) with him. Appellant failed to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. At the evidentiary hearing, counsel testified that his standard practice is to give a defendant a copy of the PSI prior to the sentencing hearing, talk to the defendant about the report and ask the defendant to inform him if there are any errors. Counsel testified that he could not recall appellant informing him about any errors in the PSI. In addition, appellant failed to demonstrate that the district court relied on any errors in the PSI when imposing sentence. Therefore, we conclude that substantial evidence supports the district court's decision to deny this claim.

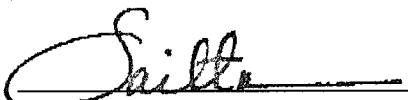
Fifth, appellant claimed that his trial counsel was ineffective for failing to file a direct appeal. Appellant failed to demonstrate that his trial counsel's performance was deficient. At the evidentiary hearing, counsel testified that he had represented appellant on multiple cases and that appellant had asked him to file an appeal on one of the other cases, but not for this case. The district court concluded that appellant had


failed to demonstrate that he was entitled to relief for this claim and substantial evidence supports that decision.

Having considered appellant's contentions and concluding that they were without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Eighth District Court Clerk
Ivan Salazar
Attorney General/Carson City
Clark County District Attorney