

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK DOUGLAS SCOTT,
Appellant,
vs.
WARDEN, NEVADA STATE PRISON,
GREGORY SMITH,
Respondent.

No. 55849

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 district court order dismissing appellant Frederick Douglas Scott's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

First, Scott contends that the district court erred by not finding that trial counsel was ineffective for failing to (1) object to jury instruction no. 12 which "created a mandatory presumption of guilt for every statement [he] made outside of trial," (2) inform him that she previously represented a witness for the prosecution in an unrelated matter, (3) object to the amended information and habitual criminal count, and (4) adequately investigate and prepare for trial. Scott also contends that appellate counsel was ineffective for failing to challenge jury instruction no. 12 and the amended information. We disagree.

When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong 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). Here, the district court found that trial counsel was not deficient. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). The district court also found that Scott's claims did not warrant an evidentiary hearing because they were either repelled by the record or not pleaded with the requisite factual specificity. See Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). The district court finally found that appellate counsel was not ineffective and that Scott's claims did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and Scott has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err by rejecting Scott's ineffective-assistance claims.

Second, Scott claims that (1) the criminal information was defective and deprived the district court of jurisdiction and (2) the jury, not the judge, was required to make the habitual criminal determination. These claims should have been raised on direct appeal and fall outside the scope of claims permissible in a habeas petition challenging a judgment of conviction based upon a jury verdict. See NRS 34.810(1)(b)(2). Therefore, we conclude that the district court did not err by rejecting these claims.

Finally, Scott claims, without any argument, that the first three grounds in his proper person habeas petition filed below "were viable appellate issues that would have change [sic] the result of the proceedings." An appellant is not allowed to incorporate by reference documents filed in the district court. See NRAP 28(e); Thomas v. State, 120 Nev. 37, 43 n.3, 83 P.3d 818, 822 n.3 (2004). Moreover, "[i]t is

appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Therefore, we need not address this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Steven P. Elliott, District Judge
Washoe District Court Clerk
Matthew P. Digesti
Attorney General/Carson City
Washoe County District Attorney