IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK RANDALL LARSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55856

FILED

SEP 29 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingersoll
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Mark Randall Larson's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Larson contends that the district court erred by denying his claims that counsel were ineffective for failing to (1) challenge the 2006 felony DUI prosecution as a breach of his 1997 guilty plea agreement, (2) challenge the 2005 amendment to NRS 484.3792 (currently codified as NRS 484C.410) as a violation of the Ex Post Facto Clause, and (3) allow him to give a statement in allocution.

When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are 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).

Here, the district court conducted an evidentiary hearing and found (1) Larson's 1997 guilty plea agreement did not limit the use of his 1997 felony DUI conviction for enhancement purposes, he was never advised that that conviction would be treated as anything other than a

felony conviction, and the application of the 2005 amendment to NRS 484.3792 did not a breach the 1997 plea agreement; (2) the 2005 amendment to NRS 484.3792 did not alter the definition of DUI or increase the punishment for DUI retrospectively and Larson committed the instant DUI offense at a time when the statute provided that he would be guilty of a felony because he had a prior felony DUI conviction; (3) although Larson was not afforded an opportunity to give a statement in allocution, the sentencing judge reviewed a letter Larson submitted in anticipation of sentencing, and Larson failed to demonstrate that he would have provided additional information that may have led to a more lenient sentence; and (4) Larson failed to show that trial and appellate counsels' performance was prejudicial. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying the Strickland test to ineffective assistance of appellate counsel); Dixon v. State, 103 Nev. 272, 274 & n.2, 737 P.2d 1162, 1164 & n.2 (1987).

The district court's factual findings are supported by substantial evidence and are not clearly wrong, and Larson has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude that the district court did not err by denying Larson's ineffective-assistance claims, and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Washoe District Court Clerk
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney