

IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR IBARRA, JR. A/K/A HECTOR
IBARRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56660

FILED

JUL 15 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Yourey
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

In his petition, filed December 15, 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 (a) that his counsel's performance was deficient in that it fell below an objective standard of reasonableness and (b) resulting prejudice in that there is a reasonable probability that, but for counsel's errors, petitioner would not have

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 Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 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).


Appellant first claimed that counsel was ineffective for disregarding appellant's request to file a direct appeal. Appellant failed to demonstrate deficiency or prejudice. The district court found that appellant did not ask counsel to file a direct appeal. Substantial evidence in the form of appellant's and counsel's testimony supports this finding. We therefore conclude that the district court did not err in denying this claim.

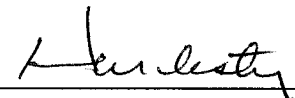
Appellant also claimed that counsel was ineffective for failing to defend the case on the ground that appellant was not present for the robbery and did not possess a firearm. Appellant failed to demonstrate deficiency. The criminal complaint charged appellant only as the robbery getaway driver and thus his presence and actual possession of the firearm were not requirements for conviction. See NRS 195.020. We therefore

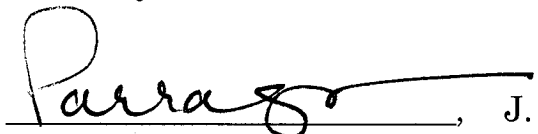
conclude that the district court did not err in denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Abbi Silver, District Judge
Hector Ibarra, Jr. a/k/a Hector Ibarra
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk