

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT OWEN BRAY,
Appellant,
vs.
WARDEN, NORTHERN NEVADA
CORRECTIONAL CENTER, JIM
BENEDETTI,
Respondent.

No. 56677

FILED

JUN 08 2011

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

ORDER OF AFFIRMANCE

This an appeal from an order of the district court denying appellant Robert Owen Bray's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Bray contends that the district court erred by failing to address California's clear violations of the Interstate Agreement on Detainers (IAD) and grant relief based on these violations. However, because Bray's judgment of conviction was entered pursuant to a guilty plea and this contention did not allege ineffective assistance of counsel or challenge the validity of the guilty plea, it was not properly raised in a post-conviction habeas petition, see NRS 34.810(1)(a), and therefore the district court did not err by failing to address its merit.

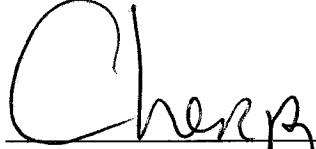
Bray also contends that the district court erred by denying his petition because he was deprived of effective assistance of counsel. Bray claims that (1) defense counsel Robert Bell was ineffective for failing to challenge a deficient detainer notification and comply with the IAD in seeking resolution of the pending charges, (2) defense counsel Cotter Conway was ineffective for not raising Bell's ineffective-assistance in a


motion to dismiss the charges, and (3) Conway's failure to pursue a speedy trial claim was prejudicial. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if 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).

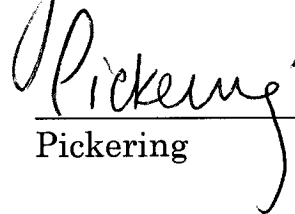
The district court conducted an evidentiary hearing and found that (1) Bray failed to present any evidence that Bell's failure to invoke the IAD rights or move for dismissal of the charges based on an IAD violation was objectively unreasonable or prejudicial; (2) Conway investigated the potential IAD violation and determined that a motion to dismiss would not be successful, and his failure to file a motion to dismiss was not objectively unreasonable under the prevailing professional norms; and (3) although Conway's failure to consider the possible speedy trial violation was unreasonable, Bray was not prejudiced because "there is no reasonable probability that the speedy trial claim, as alleged here, either alone or in conjunction with the omitted IAD claim, would have been successful." The district court determined that Bray had failed to prove by a preponderance of the evidence that defense counsel rendered ineffective assistance. 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, 987, 923 P.2d 1102, 1107 (1996); see also Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance by a preponderance of the evidence).

Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong. And Bray has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
Glynn B. Cartledge
Washoe County District Attorney
Washoe District Court Clerk