

IN THE SUPREME COURT OF THE STATE OF NEVADA


JASON MCLEAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56759

FILED

MAR 17 2011

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


This is an appeal from a district court order denying appellant Jason McLean's post-conviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; David A. Huff, Judge.


McLean contends that the district court erred by denying his petition because defense counsel provided ineffective assistance when he failed to move to disqualify the district attorney from prosecuting McLean.¹ 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 erroneous, but review the court's application of the law to those facts de novo. Lader v.

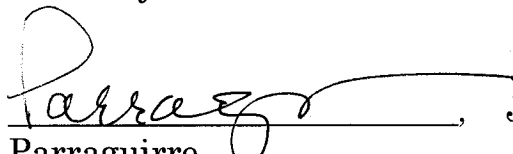
¹To the extent McLean contends, independent from his ineffective assistance of counsel claim, that a conflict of interest should have disqualified the Lyon County District Attorney from prosecuting him, this contention was neither raised as a separate contention below nor addressed in the district court's order denying the petition. Accordingly, we need not address it. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court found that McLean failed to demonstrate that trial counsel was deficient and that he was prejudiced. 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, 987-88, 923 P.2d 1102, 1107 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and McLean has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that the district court did not err by denying McLean's petition on this basis and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. David A. Huff, District Judge
Erik R. Johnson
Attorney General/Carson City
Lyon County District Attorney
Lyon County Clerk