

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WRIGHT, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56945

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of counsel raised in a April 19, 2006, petition. To prove ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, 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).

First, appellant argues that counsel was ineffective for failing to investigate alibi witnesses. Appellant fails to demonstrate that his trial counsel's performance was deficient or that he was prejudiced. Counsel testified that he discussed possible alibi witnesses with appellant and stated that he investigated those potential witnesses. Appellant's mother and his sister testified at the evidentiary hearing that they believed appellant had been in Fresno, California, around the time that the robbery took place, but could not remember the exact date. The district court determined that appellant failed to provide credible testimony that he had an alibi during the incident and further concluded that appellant's testimony at the evidentiary hearing was not credible. Given the lack of evidence that appellant was not in Reno when the robbery occurred, appellant fails to demonstrate a reasonable probability of a different outcome had counsel investigated alibi witnesses further. Substantial evidence supports the district court's factual findings and we conclude that the district court did not err in denying this claim.

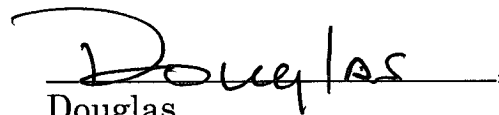
Second, appellant argues that the district court erred in denying his claim that counsel was ineffective for failing to present mitigation evidence at the sentencing hearing without considering testimony on this claim at an evidentiary hearing. Appellant fails to demonstrate that he was prejudiced. Appellant asserts that counsel should have presented evidence that appellant was a loving father and was employed until his arrest for this crime. Given appellant's lengthy criminal history, which included violent crimes, appellant fails to demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel presented testimony concerning his family life or employment history. Therefore, appellant fails to demonstrate that

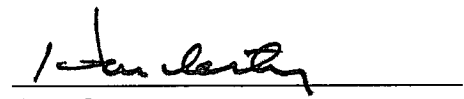
the district court erred in denying this claim without considering it at the evidentiary hearing.¹

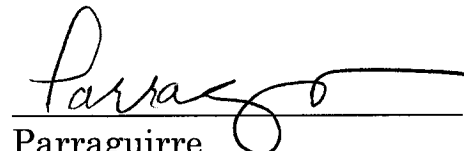
Finally, appellant argues that the district court erred in denying his pretrial motion for substitute counsel and that his sentence constitutes cruel and unusual punishment. These claims could have been raised on direct appeal and appellant failed to demonstrate good cause for his failure to do so. See NRS 34.810(1)(b). Therefore, the district court did not err in denying these claims.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

¹To the extent that appellant argues that the district court erred in declining to consider at an evidentiary hearing any of the additional claims raised below, appellant fails to provide cogent argument as to how or why the district court erred in denying these claims. "It 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).

cc: Hon. Brent T. Adams, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk