

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS RUIZ,  
Appellant,  
vs.  
E.K. MCDANIEL, WARDEN,  
Respondent.

No. 57090

**FILED**

SEP 14 2011

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Carlos Ruiz's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Ruiz contends that appellate counsel was ineffective for failing to challenge the district court's denial of his pretrial motion to remove counsel. We decline to consider this claim because it was not raised in Ruiz's habeas petition or habeas supplement and he has not alleged good cause and prejudice for failing to present it to the district court in the first instance. See Hill v. State, 114 Nev. 169, 178, 953 P.2d 1077, 1084 (1998).

Second, Ruiz contends that the district court erred by finding that defense counsel's performance did not cumulatively prejudice his defense. Ruiz alleges several deficiencies and argues that although they individually may not constitute ineffective assistance of counsel, cumulatively they prejudiced his defense and deprived him of due process, equal protection, a fair proceeding, and a reliable sentence.

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).

The district court dismissed some of Ruiz's ineffective-assistance claims after finding that they did not meet the standard of pleading required by Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984), were procedurally barred by NRS 34.810, or were repelled by the record. The district court conducted an evidentiary hearing on two of Ruiz's claims and found that one was abandoned and the other was unproven.<sup>1</sup> And the district court determined that Ruiz failed to prove that counsel's performance fell below an objective standard of reasonableness or that he was prejudiced by counsel's performance and there was no cumulative error because there was no ineffective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting test in Strickland); see also Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claims of ineffective assistance of counsel 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

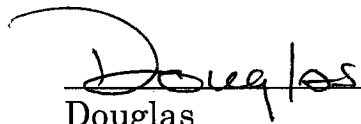
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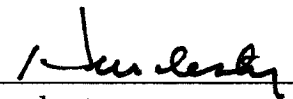
<sup>1</sup>Ruiz did not provide a transcript of the evidentiary hearing for our review.

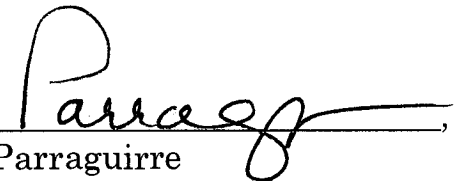
erroneous, and Ruiz has not demonstrated that the district court erred as a matter of law.

Having considered Ruiz's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Brent T. Adams, District Judge  
Jeffrey S. Blanck  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk