

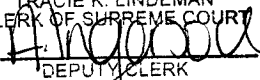
IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY SCOTT DEPENBROCK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57247

**FILED**

MAY 10 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Jeffrey Depenbrock's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Depenbrock argues that the district court erred in denying his claim that defense counsel was ineffective for failing to file an appeal on his behalf.<sup>1</sup> 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). At the evidentiary hearing, Depenbreck testified that he called his counsel at least five times and left messages on her voicemail after he was sentenced.

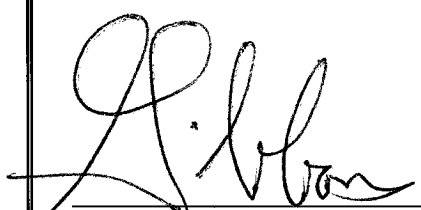
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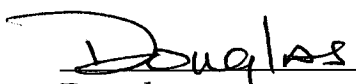
<sup>1</sup>Depenbrock's additional claims from his December 1, 2008, petition have already been considered and rejected by this court. Depenbrock v. State, Docket No. 54112 (Order Affirming in Part, Reversing in Part and Remanding, February 3, 2010). This court remanded for an evidentiary hearing solely on Depenbrock's appeal-deprivation claim.

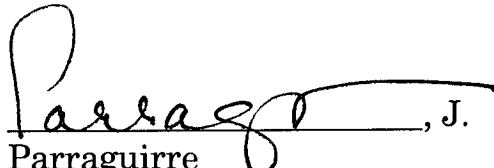
When he did not receive a response from her, he sent her a letter asking her to file an appeal, and she responded with a letter stating that it was too late to file a direct appeal. Counsel testified that she was never asked by Depenbrock to file an appeal until she received his letter approximately three months after he was sentenced, at which time she informed him that it was too late to appeal. Counsel stated that she did not receive any voicemail messages from Depenbrock and that she would have filed an appeal if he had asked her to do so. The district court found counsel to be credible and determined that Depenbrock was not denied a direct appeal. We conclude that the district court's findings were based upon substantial evidence and were not clearly wrong, and Depenbrock has failed to show that the district court erred in denying this claim. See Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance); see also State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (“[T]he district court is in the best position to adjudge the credibility of the witnesses and the evidence, and unless this court is left with the definite and firm conviction that a mistake has been committed, this court will not second-guess the trier of fact.” (internal quotation marks omitted)).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Gibbons

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

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

cc: Hon. Kathy A. Hardcastle, District Judge  
Keith C. Brower  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk