

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ANTHONY RICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57328

FILED

NOV 18 2011

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

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

Appellant Paul Anthony Rice contends that the district court erred by denying his claims that trial counsel was ineffective for failing to file a pretrial petition for a writ of habeas corpus in order to challenge his firearm and kidnapping charges for probable cause and for failing to file a timely direct appeal on his behalf. To succeed in a claim of ineffective assistance of counsel a petitioner must show both deficient performance and resulting prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for evaluating claims of ineffective assistance of counsel). 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).

After being charged with thirty-five counts, Rice pleaded guilty to four counts of being an ex-felon in possession of a firearm, one

count of battery causing substantial bodily harm, and one count of possession of a controlled substance. Rice now claims that if trial counsel had challenged the firearm and kidnapping counts he would have been able to negotiate a more favorable settlement because fourteen counts would have been dismissed. We conclude that trial counsel's performance was not deficient. A review of the preliminary hearing transcript reveals that witnesses placed Rice with no less than six different types of handguns. This was certainly sufficient to establish probable cause for the four counts of ex-felon in possession of a firearm to which Rice pleaded guilty. See Sheriff v. Shade, 109 Nev. 826, 828, 858 P.2d 840, 841 (1993) (explaining that slight or even marginal evidence is sufficient to establish probable cause). As Rice did not plead guilty to kidnapping, we decline to consider whether a pretrial challenge would have affected his plea.

Rice also contends that trial counsel failed to perfect an appeal after he requested counsel to do so. See Thomas v. State, 115 Nev. 148, 151, 979 P.2d 222, 224 (1999) (explaining that counsel has a duty to perfect an appeal if defendant expresses a desire to appeal). The State concedes that trial counsel was deficient for failing to file a direct appeal on Rice's behalf. Because the record supports Rice's appeal deprivation claim, we reverse the district court's order and remand this matter to the district court with instructions to apply the remedy set forth in NRAP 4(c). See Strickland, 466 U.S. at 687-88; see also Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002) (explaining that prejudice is presumed when counsel's conduct denies a convicted defendant an appeal). Accordingly, we

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Richard Wagner, District Judge
Lockie & Macfarlan, Ltd.
Humboldt County District Attorney
Attorney General/Carson City
Humboldt County Clerk