

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY ALLEN HATFIELD,  
Appellant,  
vs.  
WARDEN, HIGH DESERT STATE  
PRISON, DWIGHT NEVEN,  
Respondent.

No. 57351

**FILED**

SEP 15 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Gregory Allen Hatfield's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Hatfield contends that counsel was ineffective for failing to object to prosecutorial misconduct during the State's closing argument and then raise the issue on direct appeal. 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 wrong 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, Hatfield claims that the prosecutor improperly appealed to the jurors' emotions by interjecting his personal opinion. The district court found that the prosecutor did not commit misconduct by stating his opinion about the victim. The district court also found that "[e]ven if there had been [prosecutorial misconduct], it was harmless error" because

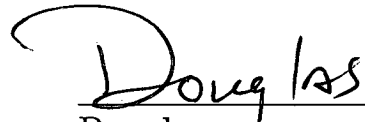
Hatfield could not demonstrate prejudice. The district court's finding is supported by substantial evidence and is not clearly wrong, and Hatfield has not demonstrated that the district court erred as a matter of law. Therefore, counsel was not ineffective for failing to object, see Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984), or raise the issue on direct appeal because Hatfield's claim did not have a reasonable probability of success, see Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996). Accordingly, we conclude that the district court did not err by rejecting this claim.

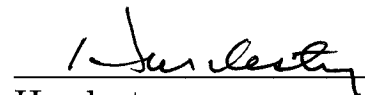
Second, Hatfield claims that the prosecutor committed misconduct by making improper comments regarding the reasonable doubt standard. Our review of the record reveals that trial counsel was not deficient by failing to object because the prosecutor's challenged statement was not improper. See Strickland, 466 U.S. at 687-88; Evans v. State, 117 Nev. 609, 631-32, 28 P.3d 498, 514 (2001). Therefore, because the prosecutor did not commit misconduct in this regard, we conclude that Hatfield's counsel was not ineffective for failing to raise the issue on direct appeal. See Kirksey, 112 Nev. at 998, 923 P.2d at 1114.

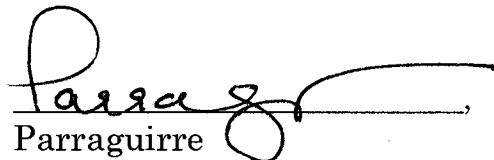
Finally, Hatfield claims his right to due process was violated by errors in the district court's order denying his habeas petition. Hatfield is correct in noting that he was found not guilty of being an ex-felon in possession of a firearm. Hatfield is also correct in noting that the issue of prosecutorial misconduct was not raised in his direct appeal despite the district court's finding that "[t]he Supreme Court did not find any prosecutorial misconduct on direct appeal." See generally Hatfield v. State, Docket No. 51719 (Order of Affirmance, February 11, 2009).

Nevertheless, we conclude that Hatfield fails to demonstrate that these errors violated his right to due process thus entitling him to relief, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Robert W. Lane, District Judge  
Carmine J. Colucci & Associates  
Nye County District Attorney  
Attorney General/Carson City  
Nye County Clerk