

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAY WHEELER,
Appellant,
vs.
WARDEN, SOUTHERN NEVADA
CORRECTIONAL CENTER, LENARD
VARE; AND HOWARD SKOLNICK,
DIRECTOR, NEVADA DEPARTMENT
OF CORRECTIONS,
Respondents.

No. 57672

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
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; Robert H. Perry, Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of trial counsel. 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).

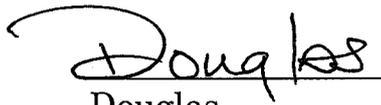
First, appellant argues that the district court abused its discretion by finding that he was not prejudiced by his counsel's failure to investigate and present expert testimony concerning the victim's injuries and battered-woman syndrome. The district court found that appellant was not prejudiced because the victim's multiple injuries were traumatic and more probably the result of multiple blows rather than multiple falls resulting in head injuries; although they later changed their stories, appellant and the victim both initially described the incident as a beating; and records of jail conversations between appellant and the victim "clearly point to a fabrication." The district court's findings are supported by substantial evidence and are not clearly wrong, and the district court did not err as a matter of law, in denying these claims.

Second, appellant argues that the district court abused its discretion by finding that he was not prejudiced by his counsel's failure to discuss the possibility that he could be adjudicated a habitual criminal. Counsel testified at the evidentiary hearing that, while he could not remember this case specifically, it was his standard practice to discuss the habitual criminal statutes with defendants that had more than one prior felony. Counsel also testified that appellant was adamant that he was innocent and refused to consider any plea deal that did not reduce the charge to a misdemeanor. The district court found that even if appellant was not told about the possibility of being subject to the habitual criminal statute, there was no resulting prejudice. The district court's findings are supported by substantial evidence and are not clearly wrong, and the district court did not err as a matter of law, in denying this claim.

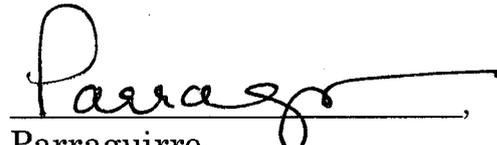
Third, appellant argues that the district court abused its discretion by finding that he was not prejudiced by his counsel's failure to object to police officer opinions about the nature and cause of the victim's injuries. The district court found that appellant was not prejudiced because qualified medical personnel gave similar testimony. The district court's findings are supported by substantial evidence and are not clearly wrong, and the district court did not err as a matter of law, in denying this claim.

Having considered appellant's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Robert H. Perry, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk