

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE ANGELO ROSENTHAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57821

FILED

NOV 18 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant George Angelo Rosenthal's second petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

Rosenthal contends that the district court erred by denying his claims that counsel provided ineffective assistance during his probation revocation hearing² by failing to (1) investigate and provide documentation

¹The record reveals that Rosenthal filed a post-conviction petition on July 28, 2009. Although the order challenged in this appeal indicates that the district court determined that that petition was procedurally barred, it does not appear that the district court has entered a written order to that effect. See NRS 34.830; NRAP 4(b)(5)(B). While we express no opinion regarding the merits of that petition, we are confident that the district court will resolve it as expeditiously as its calendar permits.

We note that the procedural bars did not apply to the instant petition because it challenged the validity of Rosenthal's confinement, see NRS 34.360, and not the validity of his conviction or his sentence, see NRS 34.720.

²This court has recognized that an ineffective assistance of counsel claim will lie only where the defendant has a constitutional or statutory right to the appointment of counsel. See McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Here, the district court conceded

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to rebut the allegations that he was not attending counseling and was “completely noncompliant” and (2) investigate and challenge the allegation that he committed another felony. We disagree.

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). Here, the district court determined that Rosenthal failed to demonstrate any prejudice relating to his first claim. See Strickland v. Washington, 466 U.S. 668, 694 (1984). Regarding his second claim, the district court determined that counsel was not ineffective for failing to challenge the allegation that he committed a new felony because Rosenthal pleaded guilty to the other felony and such a challenge would have been futile. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006); Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). We conclude that the district court did not err by rejecting these ineffective-assistance claims.

Rosenthal also contends that the district court erred by denying his claim that counsel was ineffective for failing to challenge the allegation that he was using methamphetamine. The record before this court does not indicate that this claim was raised in the district court, and

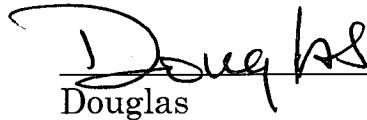
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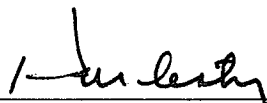
that Rosenthal was entitled to the effective assistance of counsel because the district court reviewed his claims without any reference as to whether he was entitled to the effective assistance of counsel in his probation revocation proceeding. See Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973).

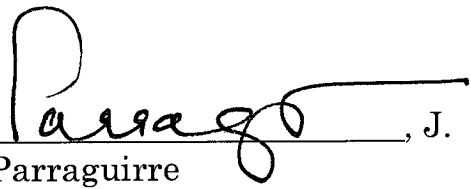
we decline to address it here in the first instance. See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), overruled on other grounds by Means v. State, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 _____, J.
Douglas

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Kenneth C. Cory, District Judge
Mario D. Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk