IN THE SUPREME COURT OF THE STATE OF NEVADA

RICK VANTHIEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58111

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malme
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Rick Vanthiel's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

First, Vanthiel contends that the district court erred by rejecting his claim that his constitutional rights were violated during his probation revocation hearing when the State was permitted to admit hearsay documents into evidence without calling the authors and sources of these documents to testify as witnesses. However, Vanthiel waived this claim when he failed to raise it on direct appeal from the order revoking his probation. See Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) ("claims that are appropriate for direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings"), overruled on other grounds by Thomas v. State, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Accordingly, the district court did not err by rejecting this claim. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the

right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

Second, Vanthiel contends that the district court erred by failing to conduct an evidentiary hearing and finding that he received effective assistance of counsel during his probation revocation hearing.[1] Vanthiel asserts that defense counsel was ineffective for failing to conduct a reasonable investigation, subpoena witnesses, and object to the admission of hearsay evidence. When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are 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 considered the briefs, transcripts, and arguments of counsel; determined that an evidentiary hearing was unnecessary; and found that Vanthiel failed to demonstrate that he was

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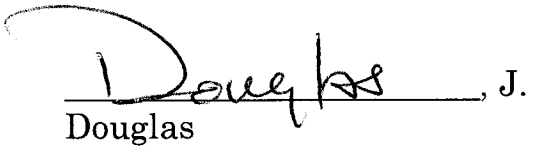
[1]We have recognized that an ineffective-assistance-of-counsel claim will lie only where the defendant has a constitutional or statutory right to the appointment of counsel. McKague v. Warden, 112 Nev. 159, 164, 912 P.2d 255, 258 (1996). In the context of probation revocation proceedings, counsel is constitutionally required if the probationer requests counsel and makes a colorable claim that (1) he did not commit the alleged violations, or (2) that there are justifying or mitigating circumstances which make revocation inappropriate and these circumstances are difficult or complex to present. Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973); Fairchild v. Warden, 89 Nev. 524, 525, 516 P.2d 106, 107 (1973) (adopting the approach set forth in Gagnon). The district court appears to have conceded that Vanthiel was entitled to the effective assistance of counsel because it reviewed his claims without any reference as to whether Vanthiel was entitled to the effective assistance of counsel. Accordingly, we review Vanthiel's ineffective-assistance claim on its merits.

prejudiced by counsel's performance because the evidence adduced during the hearing was more than adequate to satisfy the district court that Vanthiel's conduct was not as good as required by the conditions of his probation. Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong, and Vanthiel has not demonstrated that the district court erred as a matter of law. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting test in Strickland); see also Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claims of ineffective assistance of counsel by a preponderance of the evidence); Lewis v. State, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974) (reviewing the district court's decision to revoke probation for an abuse of discretion); Hargrove v. State, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (identifying the circumstances under which a petitioner is entitled to an evidentiary hearing).

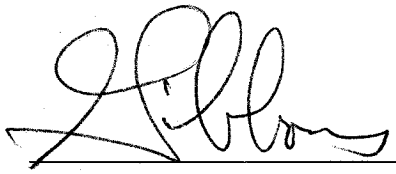
Third, Vanthiel contends that the district court erred by rejecting his challenge to the computation of time served. Relying on NRS 209.4465, Vanthiel argues that he should have earned enough credit to discharge his probation 22 days prior to his arrest for violating the conditions of his probation. The district court found that Vanthiel's probation violation occurred "almost six months in advance of his best possible potential discharge date." We note that NRS 209.4465 does not apply to Vanthiel and conclude that he has not demonstrated that the district court erred in rejecting this claim. See NRS 176A.500(5), (6) (identifying the deductions allowed for a period of probation).

Having considered Vanthiel's contentions and concluded that they are without merit, we

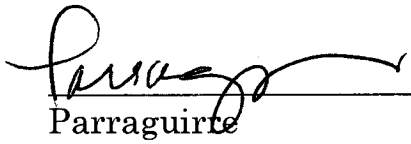
ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas



_____, J.
Gibbons



_____, J.
Parraguirre

cc: Hon. Valorie J. Vega, District Judge
Bailus Cook & Kelesis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk