

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW CLAYTON BARCUS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58146

FILED

NOV 18 2011

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

ORDER OF AFFIRMANCE

This is an appeal from district court orders dismissing in part and granting in part appellant Matthew Barcus's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Barcus contends that the district court erred by denying his claims that (1) trial counsel was ineffective because she failed to present evidence of the value of the stolen vehicle at the preliminary hearing and at trial, (2) trial counsel was ineffective at sentencing because she did not object to the prosecutor's hearsay testimony regarding facts not in evidence, (3) appellate counsel was ineffective because she did not challenge the district court's reliance on stale and nonviolent prior convictions to adjudicate him as a habitual criminal or the prosecutor's hearsay testimony at sentencing, and (4) he was deprived of due process, equal protection, and a fair proceeding because he was sentenced based on the prosecutor's hearsay and stale and nonviolent prior convictions. Barcus also appears to contend that the district court erred by denying the first claim without an evidentiary hearing. 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). Our review of the record indicates that the district court did not err by denying Barcus's claims, see NRS 34.810(1)(b)(1); Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996); see also Foster v. State, 121 Nev. 165, 170, 111 P.3d 1083, 1087 (2005) (tactical decisions of appellate counsel are "virtually unchallengeable" (quotation marks omitted)); Denson v. State, 112 Nev. 489, 493, 915 P.2d 284, 287 (1996), or by declining to hold an evidentiary hearing regarding all claims, see Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002); Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Jerome Polaha, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk