

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON LAMONT HENDRIX,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59047

**FILED**

JUL 26 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Aaron Lamont Hendrix's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Guilty plea

Hendrix contends that the district court abused its discretion by finding that his guilty plea was valid despite his mental health issues. However, the district court observed that it had not seen any documentation regarding Hendrix's alleged mental health issues and found no indication in the record that Hendrix's guilty plea was not knowingly, voluntarily, and intelligently entered. The record on appeal supports the district court's finding and we conclude that the district court did not abuse its discretion in this regard. See Johnson v. State, 123 Nev. 139, 144, 159 P.3d 1096, 1098 (2007) ("This court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion."); Molina v. State, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004) (defendant bears the burden of proving that his plea is invalid).

### Direct appeal

Hendrix contends that the district court abused its discretion by finding that he was not deprived of his right to an appeal due to ineffective assistance of counsel.

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); see also Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987, 923P.2d 1102, 1107 (1996) (adopting the Strickland test). To prevail on an appeal deprivation claim based on ineffective assistance of counsel, the petitioner must demonstrate that counsel's performance was deficient because it resulted in a breach of "counsel's duty to inform and consult with the client regarding the right to appeal and counsel's duty to file an appeal." Toston v. State, 127 Nev. \_\_\_, \_\_\_, 267 P.3d 795, 799 (2011). The petitioner does not have to demonstrate that prejudice ensued, id., or "specify the points he would raise were his right to appeal reinstated," Roe v. Flores-Ortega, 528 U.S. 470, 486 (2000). However, the petitioner must prove the facts underlying his claim of ineffective assistance of counsel by a preponderance of the evidence. Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

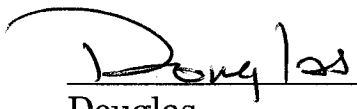
The district court conducted an evidentiary hearing on Hendrix's appeal deprivation claim and found that there was a factual dispute between defense counsel and Hendrix as to whether Hendrix

requested an appeal. The district court also found that the grounds Hendrix wanted to raise on appeal were frivolous and there were no non-frivolous grounds for an appeal and denied the claim on this basis.

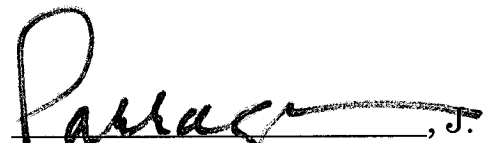
The district court erroneously denied Hendrix's appeal deprivation claim based on its conclusion that Hendrix had failed to demonstrate the existence of any nonfrivolous grounds for an appeal. Nevertheless, we conclude that the preponderance of the evidence does not support Hendrix's claim that counsel's performance was deficient. Defense counsel testified that she had a conversation with Hendrix after he was sentenced, she told Hendrix that since he was unhappy with his sentence he could file an appeal or a motion to modify sentence, and she subsequently received a letter from Hendrix asking her to proceed with a motion to modify sentence. The letter provided in Hendrix's supplemental appendix supports counsel's testimony. Accordingly, we conclude that the district court reached the right result, albeit for the wrong reason. 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.").

Having considered Hendrix's contentions and for the reasons discussed above, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Gibbons

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

cc: Hon. Jerome T. Tao, District Judge  
Law Offices of Martin Hart, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk