

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT ORTIZ,  
Appellant,  
vs.  
JACK PALMER; AND THE STATE OF  
NEVADA,  
Respondents.

No. 59652

**FILED**

DEC 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Gilbert Ortiz's post-conviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

First, Ortiz contends that the district court erred by not finding that counsel was ineffective for (1) threatening him with life in prison if he refused to enter a guilty plea, (2) failing to inform him about the State's plea offer of 1-6 years, and (3) failing to investigate, interview witnesses, and pursue an alibi defense. We disagree.<sup>1</sup>

When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong but review the court's application of the law to those facts de novo.

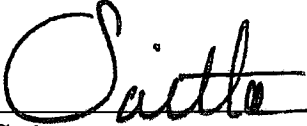
<sup>1</sup>Ortiz also lists two additional claims—that counsel was ineffective at sentencing and for recommending that he plead guilty. Ortiz fails to offer any argument in support of these claims and therefore we need not address them. See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").


Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court conducted an evidentiary hearing, heard testimony from Ortiz and his former counsel, considered a letter from a witness pertaining to Ortiz's alleged alibi defense, and concluded that counsel's performance was not deficient. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Missouri v. Frye, 566 U.S. \_\_\_, \_\_\_, 132 S. Ct. 1399, 1409 (2012). The district court also concluded that Ortiz entered his guilty plea knowingly and intelligently. See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). We conclude that the district court's findings are supported by substantial evidence and not clearly wrong, and Ortiz has not demonstrated that the district court erred as a matter of law.


Second, Ortiz contends that the district court erred by declining to conduct an evidentiary hearing on his claim of actual innocence. Ortiz's former counsel, Harvey Kuehn, testified extensively at the evidentiary hearing about his investigation into a possible alibi defense. A letter from a potential alibi witness was admitted as an exhibit at the evidentiary hearing and considered by the district court. In fact, instead of having the witness testify, the district court and the parties agreed to stipulate to the fact that the witness' testimony would be similar to her letter and that she was credible. Therefore, Ortiz's claim is belied by the record. In a related matter, we also conclude that Ortiz failed to demonstrate that the district court abused its discretion by not sua sponte granting a continuance in order to allow him another opportunity to subpoena the arresting officer to appear in support of his actual innocence claim. See generally Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007) ("[W]hen a defendant fails to demonstrate that he was prejudiced by the denial of a continuance, the district court's decision denying a

continuance is not an abuse of discretion.”); see also Sparks v. State, 96 Nev. 26, 28, 604 P.2d 802, 804 (1980) (holding that even without a formal written or oral motion by a party, it is within the district court’s discretion to sua sponte continue a hearing based on the absence of a witness if it finds that good cause exists). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Robert W. Lane, District Judge  
Robert E. Glennen, III  
Nye County District Attorney  
Attorney General/Carson City  
Nye County Clerk