

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD WILLIAM RANGEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59969

FILED

NOV 14 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing appellant Ronald William Rangel's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Rangel claims that the district court erred in denying his claims of ineffective assistance of trial counsel. 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 district court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Following an evidentiary hearing, the district court concluded that counsel was effective. We agree.

First, Rangel claims that the district court erred when it denied his claim that counsel was ineffective for failing to request a jury instruction on voluntary intoxication. At the evidentiary hearing, counsel admitted that failing to request a jury instruction was erroneous. But the district court concluded that, even assuming error, Rangel failed to demonstrate that he was prejudiced because counsel was allowed to argue that Rangel lacked the necessary intent to commit the crime. See

Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for ineffective assistance of counsel; petitioner must satisfy both parts of test to prevail); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting test in Strickland). Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly erroneous and Rangel failed to demonstrate that the district court erred as a matter of law.

Second, Rangel contends that the district court erred when it denied his claim that counsel was ineffective for failing to adequately present Rangel's case. Specifically, Rangel argues that counsel should have cross-examined the State's witnesses more thoroughly and presented evidence of voluntary intoxication. At the evidentiary hearing, counsel testified that he cross-examined the police officers and asked if they had conducted field sobriety tests in an attempt to infer that Rangel could have been drunk. Counsel also testified that he did not produce direct evidence of intoxication as a strategic determination—Rangel was the only source of that evidence and he had several prior convictions. See Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996) (strategic determinations are “virtually unchallengeable” (quotations omitted)). The district court determined that Rangel's counsel was effective. See Strickland, 466 U.S. at 687; Kirksey, 112 Nev. at 987, 923 P.2d at 1107. Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly erroneous and Rangel failed to demonstrate that the district court erred as a matter of law.

Third, Rangel claims that the district court erred by denying his claim that counsel was ineffective for failing to present evidence of a

mental defect or request a psychological evaluation when, during opening statements, he stated that Rangel was not in his “right state of mind” during the crime. But counsel testified that there was never any indication that Rangel was incompetent and the comment about his mental state was directed at Rangel’s intoxication and not a mental defect. The district court determined that Rangel’s counsel was effective. See Strickland, 466 U.S. at 687; Kirksey, 112 Nev. at 987, 923 P.2d at 1107. We conclude that the district court did not err in denying this claim.

Fourth, Rangel claims that the district court erred by denying his claim that counsel was ineffective for failing to challenge the admission of the intercepted phone calls he made during his incarceration at the Clark County Detention Center. Rangel argues that counsel should have objected and required the State to properly authenticate that he made the call. At the evidentiary hearing, counsel testified that he had played the tape for Rangel before trial and Rangel never indicated that it was someone else who made the phone call. Further, counsel testified that he avoided objecting to the phone call because the officer authenticating the call had been involved in Rangel’s extradition and counsel did not want the jury to learn of the extradition. The district court denied relief on this claim and we conclude that it did not err. Doleman, 112 Nev. at 848, 921 P.2d at 280-81.

Fifth, Rangel claims the district court erred by denying his claim that counsel was ineffective for admitting guilt in the opening statement and closing argument. The district court erroneously determined that this entire issue was waived because part of Rangel’s argument—the adequacy of the trial court’s canvass—was not raised on direct appeal. See NRS 34.810(1)(b). Nevertheless, we conclude that the

district court reached the correct result when it denied relief on this issue, albeit for the wrong reason. See Picetti v. State, 124 Nev. 782, 790 n.14, 192 P.3d 704, 709 n.14 (2008). At the evidentiary hearing, counsel testified that he discussed the intoxication defense strategy with Rangel and received his approval. Further, because the trial court became concerned about counsel's admissions during Rangel's trial, the trial court canvassed Rangel regarding this issue and Rangel consented to this strategy. See Jones v. State, 110 Nev. 730, 737-38, 877 P.2d 1052, 1056-57 (1994) (holding that a trial strategy of conceding a client's guilt without the client's consent falls below an objective standard of reasonableness); Wiley v. Sowders, 669 F.2d 386, 389 (6th Cir. 1982) (holding that when a client gives consent this tactic is legitimate); see also Doleman, 112 Nev. at 848, 921 P.2d at 280-81. Because Rangel failed to demonstrate that his counsel was deficient, we affirm the denial of this claim.

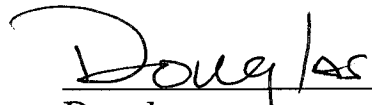
Sixth, Rangel claims the district court erred by denying his claim that counsel was ineffective for failing to challenge the State's request to seek punishment as a habitual offender. At the evidentiary hearing, counsel testified that he and Rangel had reviewed the presentence investigation report. Rangel did not indicate that his prior convictions were inaccurate. Thus, the district court concluded that counsel was not deficient when he failed to challenge the habitual offender enhancement. See Strickland, 466 U.S. at 687; Kirksey, 112 Nev. at 987, 923 P.2d at 1107. Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly erroneous and Rangel failed to demonstrate that the district court erred as a matter of law.

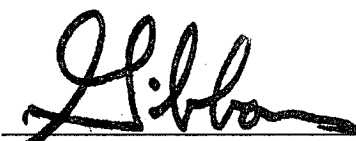
Seventh, Rangel claims that the district court erred by denying his claim that trial counsel was ineffective due to a conflict of interest. At the evidentiary hearing, counsel testified that Rangel was unhappy with how the case progressed. During the trial, Rangel had submitted bar complaints and moved to dismiss counsel. But Rangel failed to demonstrate that counsel had divided loyalties or, assuming that there was a conflict, that counsel's performance was adversely affected. See Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). The district court concluded that counsel was effective. We conclude that the district court did not err in denying this claim.

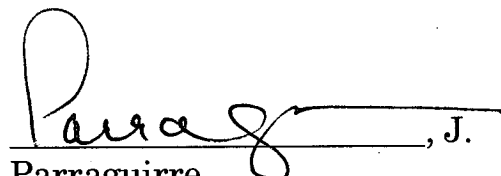
Rangel also claims that cumulative error mandates reversal of his convictions. But we have found only one error—dismissing Rangel's entire claim regarding counsel's admissions of guilt. "One error is not cumulative error." U.S. v. Sager, 227 F.3d 1138, 1149 (9th Cir. 2000); see also Hoxsie v. Kerby, 108 F.3d 1239, 1245 (10th Cir. 1997) ("Cumulative-error analysis applies where there are two or more actual errors."); State v. Perry, 245 P.3d 961, 982 (Idaho 2010) ("[A] necessary predicate to the application of the doctrine [of cumulative error] is a finding of more than one error.").

Having considered Rangel's claims and concluded that they require no relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Chief Judge, Eighth Judicial District Court
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk