

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN BRADLEY WESTMAN,
Appellant,
vs.
JACK PALMER, WARDEN,
Respondent.

No. 60229

FILED

NOV 14 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant John Bradley Westman's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

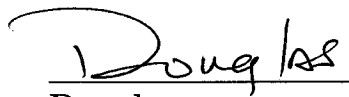
Westman argues that the district court erred by denying his claim that counsel was ineffective for failing to bring forth mitigation evidence at sentencing in the form of multiple character witnesses. He further claims that the lack of mitigating evidence resulted in a sentence "based upon impalpable or highly suspect evidence" because the district court had "less than full and accurate information." When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the district 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). Here, the district court conducted an evidentiary hearing during which Westman, his counsel, and several family members testified. Westman's family testified that he was a good father and brother, that he was employable, and that he was a good person. The district court found that the testimony of Westman's family


was not compelling, considering the offense and Westman's criminal history, and concluded that the additional mitigating evidence would not have resulted in a different sentence. Thus, the district court concluded that Westman failed to show that trial counsel was ineffective. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). Because the district court's factual findings are supported by substantial evidence and are not clearly wrong and its legal conclusions are sound, Westman has not demonstrated that the district court erred by denying this claim.

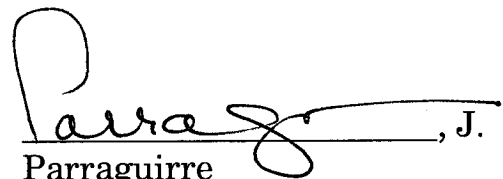
Westman also contends that his sentence violates the Eighth Amendment. We decline to consider this claim because he did not raise this claim in his proper person post-conviction petition or supplemental petition. See Hill v. State, 114 Nev. 169, 178, 953 P.2d 1077, 1084 (1998).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk