

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC RUSSELL TRUSTY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60278

FILED

DEC 12 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 denying appellant Marc Russell Trusty's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, Trusty contends that the district court erred by denying his claims that trial counsel was ineffective because counsel did not investigate or challenge the victim's identification of Trusty and did not consult with him when he stated the incorrect maximum sentence during entry of his guilty plea. 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 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).

The district court found that Trusty failed to demonstrate that trial counsel was deficient and/or that he was prejudiced. See Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); see also Strickland v. Washington, 466 U.S. 668, 687 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and Trusty has not demonstrated that the district court erred as a matter of law. See Perry v.

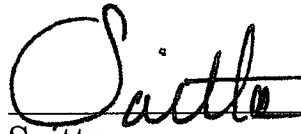
New Hampshire, 565 U.S. ___, ___, 132 S. Ct. 716, 728 (2012); Little v. Warden, 117 Nev. 845, 851, 34 P.3d 540, 544 (2001); Bias v. State, 105 Nev. 869, 871-72, 784 P.2d 963, 964-65 (1989).

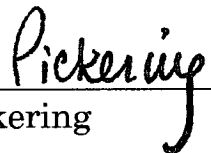
Second, Trusty contends that the district court erred by denying his claim that trial counsel was ineffective for failing to object to the State's reference, during sentencing, to other robberies he allegedly committed. It appears that the district court denied this claim because it found that the factual allegation was belied by the record. The district court's factual finding in this regard is not supported by the record. Nevertheless, it reached the correct result by denying this claim because counsel was not deficient for not objecting to the State's argument. See Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (district court may consider prior uncharged crimes at sentencing); Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (this court will affirm the judgment of the district court if it reaches the correct result for the incorrect reason).

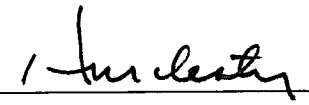
Third, Trusty contends that the district court erred by denying his claim that his due process rights were violated because the victim's identification of him was the result of an unnecessarily suggestive procedure. It is unclear from the record whether this was pursued as an independent claim for relief below and/or whether the district court denied this claim on its merits. To the extent the claim was pursued and the district court denied it on its merits, the district court erred because this claim does not challenge the validity of Trusty's plea or the effectiveness of his counsel and was therefore not appropriately raised in his petition. See NRS 34.810(1)(a). The district court nevertheless reached the correct

result, albeit for an incorrect reason. See Wyatt, 86 Nev. at 298, 468 P.2d at 341. We conclude that Trusty is not entitled to relief, and we

ORDER the judgment of the district court AFFIRMED.


Saitta _____, J.


Pickering _____, J.


Hardesty _____, J.

cc: Hon. Brent T. Adams, District Judge
Matthew P. Digesti
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk