

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN HUNT,  
Appellant,  
vs.

BRIAN WILLIAMS, IN HIS OFFICIAL  
CAPACITY AS THE WARDEN OF THE  
SOUTHERN DESERT CORRECTIONAL  
CENTER; AND HOWARD SKOLNIK, IN  
HIS OFFICIAL CAPACITY AS THE  
DIRECTOR OF THE NEVADA  
DEPARTMENT OF CORRECTIONS,  
Respondents.

No. 60334

**FILED**

DEC 13 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Brian Hunt's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

First, Hunt contends the district court erred by not finding that counsel was ineffective for advising him to plead guilty (1) to burglary without investigating and determining whether or not the State could satisfy the statutory elements, (2) to theft because the charge could not be proved, and (3) without filing a motion to suppress evidence allegedly seized from garbage cans at his residence. We disagree.


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. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court conducted an extensive evidentiary hearing over a three-


day period, heard testimony from several witnesses including Hunt and his former counsel, and concluded that counsel's performance was not deficient and he failed to demonstrate prejudice. See Hill v. Lockhart, 474 U.S. 52, 59 (1985); see also Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). The district court also concluded that Hunt entered his guilty plea knowingly, voluntarily, 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 Hunt has not demonstrated that the district court erred as a matter of law.

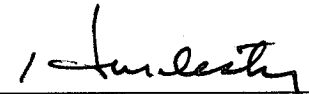
Second, Hunt contends the district court erred by granting the State's motion to dismiss his petition because "a motion made under NRCP 41(b) or [NRCP] 50(a) has no functional difference from a Rule 56 summary judgment in this context" and, in Beets v. State, 110 Nev. 339, 341, 871 P.2d 357, 358 (1994), this court stated that the civil rule of procedure allowing for summary judgment is not a proper "method of determining the merits of a post-conviction petition for a writ of habeas corpus" proceeding under NRS chapter 34. Hunt also claims that pursuant to NRCP 50(a), a district court may not enter a directed verdict in a habeas proceeding where, as here, "there is conflicting testimony on a material issue." Hunt's argument, however, is misplaced and without merit. The State did not move pursuant to NRCP 41(b) or NRCP 50(a) when it sought dismissal of the petition after Hunt completed the presentation of his witnesses and rested during the evidentiary hearing. Moreover, the district court did not grant the State's oral motion pursuant to those civil rules, but rather denied Hunt's petition in an order

containing findings of fact and conclusions of law with specific reference to NRS chapter 34. See NRS 34.830; see also NRS 34.810. Therefore, we conclude that Hunt's contention is belied by the record and he is not entitled to relief on these grounds. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. James E. Wilson, District Judge  
Richard F. Cornell  
Attorney General/Carson City  
Attorney General/Reno  
Carson City Clerk