

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ADRIAN LEE BROWN-
DAVIS,
Appellant,
vs.
GREG SMITH, WARDEN,
Respondent.

No. 60392

FILED

SEP 13 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Richard Adrian Lee Brown-Davis's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Brown-Davis argues that the district court improperly denied his claim that his counsel was ineffective for failing to request verification of the restitution amount. The district court found that counsel's decisions on this matter were not unreasonable and that Brown-Davis failed to show prejudice. We agree.

A successful ineffective-assistance claim requires a showing (1) that counsel's performance was deficient (the representation fell "below an objective standard of reasonableness") and (2) prejudice (but for counsel's errors there is a reasonable probability that the result of the proceeding would have been different). Strickland v. Washington, 466 U.S. 668, 687-88, 694 (1984); Kirksey v. State, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).


Counsel testified at the evidentiary hearing that he met with Brown-Davis, discussed the presentence investigation report, and formed

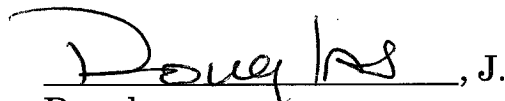
a strategy. They agreed to argue for the least amount of prison time possible. Counsel felt that disputing the restitution would distract from his argument and possibly dilute Brown-Davis's acceptance of responsibility, which would result in an increased prison sentence. The district court found, and we agree, that this was a reasonable strategy. See Foster v. State, 121 Nev. 165, 170, 111 P.3d 1083, 1087 (2005) (recognizing that reasonable strategy decisions are "virtually unchallengeable absent extraordinary circumstances" (internal citations omitted)).

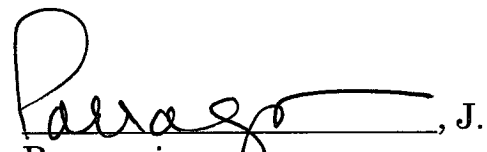
Even if counsel's conduct was deficient, Brown-Davis failed to show prejudice. In this case, the Division of Parole and Probation telephoned the victim and he reported \$70,000 in medical expenses and lost wages. This amount was included in the presentence report. At the evidentiary hearing, Brown-Davis provided an affidavit illustrating that the restitution amount was unverified, but he failed to demonstrate that this amount was erroneous. Cf. Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999) (upholding a restitution award based only on the amount "recited in the presentence report").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Parraguirre, J.

cc: Hon. Brent T. Adams, District Judge
Sally S. deSoto
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk