

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN MICHAEL MASLOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60991

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 denying appellant Kevin Michael Maslow's post-conviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

First, Maslow argues that the district court erred by finding that he was not deprived of his right to appeal due to ineffective assistance of counsel. 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); see also Hill v. Lockhart, 474 U.S. 52, 58-59 (1985) (establishing test for ineffective assistance of counsel when defendant pleaded guilty); Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996). Counsel must file a notice of appeal on behalf of his client "when the client's desire to challenge the conviction or sentence can be reasonably inferred from the totality of the circumstances." Toston v. State, 127 Nev. ___, ___, 267 P.3d 795, 801

(2011). The petitioner does not have to demonstrate that prejudice ensued. Id. at ____, 267 P.3d at 800.

The district court erroneously denied Maslow's appeal-deprivation claim based on its conclusion that Maslow had failed to demonstrate prejudice. Nevertheless, we conclude that the totality of the circumstances does not support Maslow's claim that counsel's performance was deficient. At an evidentiary hearing, counsel testified that he advised Maslow before sentencing that he could file an appeal and provided Maslow his contact information. Maslow's plea agreement advised him of his limited right to appeal and that he must notify counsel as soon as possible if he wanted to pursue an appeal. Counsel testified that Maslow was upset after the district court gave a greater sentence than expected from the plea agreement. However, Maslow was aware that the district court could disregard the negotiated sentence. Maslow never contacted counsel or requested an appeal. Accordingly, we conclude that the district court reached the right result, albeit for the wrong reason. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").¹

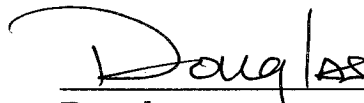
Second, Maslow argues that the district court erred by denying his claim that counsel was ineffective for failing to bring forth mitigation evidence at sentencing. At the evidentiary hearing, Maslow's


¹To the extent Maslow argues that NRS 453.3405(2)'s "substantial assistance" provision is unconstitutionally vague, he lacks standing to challenge that provision of the statute because he declined to render any assistance that would trigger that provision. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (setting forth three elements required for standing).

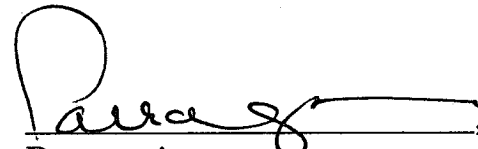
father testified that Maslow was interested in maintaining his sobriety, that he was employable, and that he was a good person. The district court found that the testimony of Maslow's father was not compelling, considering the offense and Maslow's criminal history, and concluded that the additional mitigating evidence would not have resulted in a different sentence. Thus, the district court concluded that Maslow failed to show that trial counsel was ineffective. See Hill, 474 U.S. at 58-59; Kirksey, 112 Nev. at 987, 923 P.2d at 1107. Because the district court's factual findings are supported by substantial evidence and are not clearly wrong and its legal conclusions are sound, Maslow has not demonstrated that the district court erred by denying this claim.

Having considered Maslow's claims and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. James E. Wilson, District Judge
Karla K. Butko
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk