

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY DEAN PATINO A/K/A RANDY
DIAZ PATINO,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 61765

FILED

JAN 15 2014

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 Randy Dean Patino's post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Patino contends that the district court erred by denying his "ineffective assistance claim without considering appellants [sic] allegation that counsel let lapse a plea offer previously made despite his insistence that offer be accepted." In his proper person petition below, however, Patino's specific claim was that retained trial counsel was ineffective for failing "to continue the plea-bargaining process" after the district court conducted a hearing and concluded that inculpatory statements made to investigating officers were admissible at trial. Patino also contends that the district court abused its discretion by denying his

motion for the appointment of counsel and by denying his petition without conducting an evidentiary hearing.¹ We disagree.

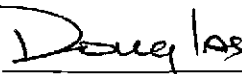
When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court determined that Patino "had no right to a plea deal of his choosing that the State never offered" and rejected his claim. In the absence of an evidentiary hearing and/or supporting documentation made part of the record, it is unclear how the district court found "that the State never offered" the 1-10 year plea deal, as alleged by Patino in his petition. Nevertheless, Patino failed to state a claim with the requisite factual specificity either entitling him to an evidentiary hearing, *see Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), or demonstrating that trial counsel's performance was deficient and that he was prejudiced, *see Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); *see also Cullen v. Pinholster*, 563 U.S. ___, ___, 131 S. Ct. 1388, 1408 (2011) ("We have recently reiterated that [s]urmounting *Strickland's* high bar is never an easy task." (quotation marks omitted) (alteration in original)). Moreover,

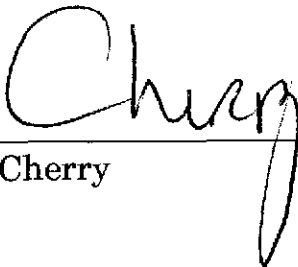
¹Patino's appeal from the order denying his petition was filed with the assistance of retained counsel.

the district court did not abuse its discretion by denying Patino's motion for the appointment of counsel. *See* NRS 34.750(1); *McKague v. Warden*, 112 Nev. 159, 912 P.2d 255 (1996). Therefore, we conclude that the district court did not err by rejecting Patino's ineffective-assistance claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of Thomas Stafford II
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The State's answering brief does not comply with NRAP 32(a)(4) because the text in the body of the brief is not double-spaced. Counsel for the State is cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. *See* NRAP 28(j).