

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND A. GARRETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62191

**FILED**

**FEB 12 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of counsel raised in his January 12, 2011, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if 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).

Appellant argues that his counsel failed to inform him prior to entry of his plea that a medical expert had concluded that the victim's death was caused by medical negligence during the care of the victim following the incident with appellant. Appellant fails to demonstrate that his counsels' performances were deficient or that he was prejudiced. At the evidentiary hearing, both of appellant's counsel testified that they discussed the medical evidence with appellant prior to entry of appellant's guilty plea. The district court concluded that appellant was aware of the medical evidence prior to entry of his plea and that appellant's testimony to the contrary was not credible. Substantial evidence supports that decision. *See id.*

Appellant also fails to demonstrate that he would not have pleaded guilty and would have insisted on going to trial as this type of medical evidence would not have relieved appellant of criminal liability. This court has explained that "a criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the 'proximate cause' of the result." *Etcheverry v. State*, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991) (quoting *Trent v. Clark Cnty. Juvenile Court Services*, 88 Nev. 573, 577, 502 P.2d 385, 388 (1972)). "[A]n intervening cause must be a superseding cause, or the sole cause of the injury in order to completely excuse the prior act." *Id.* Furthermore, "[a] defendant will not be relieved of criminal liability for murder when his action was a substantial factor in bringing about the death of the victim." *Lay v. State*, 110 Nev. 1189, 1192-93, 886 P.2d 448, 450 (1994). Here, appellant's punch caused the victim to hit his head on the concrete, which caused the victim to sustain severe injuries that necessitated the medical treatment the victim received. Under these circumstances, appellant's actions were a

substantial factor in the victim's death, and therefore, he fails to demonstrate he was prejudiced by any failure of counsel to properly explain to him the nature of the findings of the medical expert. Therefore, the district court did not err in denying this claim.

Next, appellant argues that his appellate counsel was ineffective. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697.

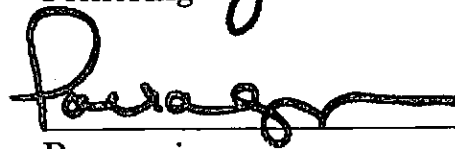
Appellant argues that his appellate counsel was ineffective for failing to assert in a motion to withdraw guilty plea and argue on direct appeal that appellant's plea was unknowing because he was not aware of the nature of the medical expert's findings. Appellant fails to demonstrate either deficiency or prejudice because, as discussed previously, testimony presented at the evidentiary hearing demonstrated that appellant was aware of the medical evidence and because a claim that he was not criminally liable due to intervening medical negligence was without merit. Further, appellate counsel does not have a duty to file a post-conviction motion to withdraw guilty plea as that is beyond the scope of his

representation. Therefore, the district court did not err in denying this claim. Accordingly, we


ORDER the judgment of the district court AFFIRMED.

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

Pickering

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

Parraguirre

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

Saitta

cc: Hon. Stefany Miley, District Judge  
Law Office of Betsy Allen  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk