

IN THE SUPREME COURT OF THE STATE OF NEVADA

JARED AUSTIN ROGERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62317

FILED

JAN 16 2014

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
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. Tenth Judicial District Court, Churchill County; Robert E. Estes, Senior Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of counsel raised in his November 18, 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).

14-01694

First, appellant argues that his counsel was ineffective for failing to suppress his statement to the police due to a violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Appellant fails to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant's written statement, which appellant signed, included an acknowledgement that appellant had been informed of his *Miranda* rights. In addition, the interviewing officer testified at the evidentiary hearing that he advised appellant of his *Miranda* rights prior to interviewing appellant and appellant agreed to talk with the officer. Appellant failed to demonstrate that he would have refused to plead guilty and would have insisted on going to trial had counsel moved to suppress his statement on the basis that he was not advised of his *Miranda* rights. Therefore, the district court did not err in denying this claim.

Second, appellant argues that his counsel was ineffective for failing to investigate the case, failing to provide discovery to appellant, and failing to take seriously appellant's statement of innocence. Appellant fails to demonstrate that his counsel's performance was deficient or that he was prejudiced. Counsel testified at the evidentiary hearing that he investigated witnesses and that appellant had full access to the case file. Counsel also testified that he discussed the case with appellant on multiple occasions and knew appellant's version of events. Counsel testified that he believed the victim would be a compelling witness at trial, that there were additional witnesses to the sexual assault, and that the plea deal was appellant's best option given the evidence against him. Appellant fails to demonstrate that he would have refused to plead guilty and would have insisted on going to trial had counsel conducted further investigation, provided additional discovery to appellant, or further

considered appellant's statement of innocence. Therefore, the district court did not err in denying this claim.

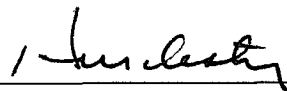
Third, appellant argues that his counsel has been reprimanded by the State Bar of Nevada in the past, which appellant asserts is evidence counsel was ineffective in this case. Appellant fails to demonstrate either deficiency or prejudice for this claim as he did not provide any facts that would support his claim that counsel's prior activity affected his performance in this case. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.

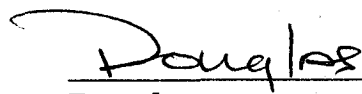
Next, appellant claimed that his plea was not entered knowingly and intelligently because the plea canvass was deficient and he was not provided notice that he faced lifetime supervision. Appellant fails to meet his burden to demonstrate that his plea was invalid. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Appellant did not identify any specific deficiency in the plea canvass and a review of the transcript of that hearing belies appellant's claim that it was deficient. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. In addition, appellant was informed in the guilty plea agreement and again at the plea canvass that he faced lifetime supervision. Therefore, the district court did not err in denying this claim.

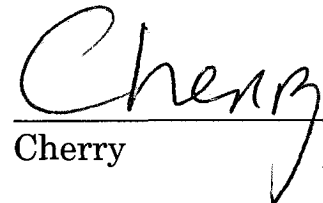
Finally, appellant claimed that there was insufficient evidence to support his conviction and that he was improperly charged with three counts of sexual assault. These claims were not based on an allegation that appellant's plea was involuntarily or unknowingly entered or that his plea was entered without effective assistance of counsel, and therefore,

were not permissible in a post-conviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err in denying these claims.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Thomas L. Stockard, District Judge
Hon. Robert E. Estes, Senior Judge
Evenson Law Office
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk

¹The briefs submitted by the parties do not comply with NRAP 32(a)(4) because the text is not double spaced. Counsel for each party is cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. *See* NRAP 28.2(b).