

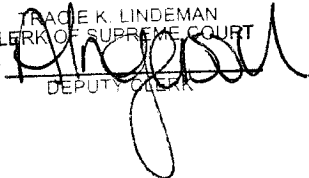
IN THE SUPREME COURT OF THE STATE OF NEVADA

BISHOP LOTT A/K/A ANTHONY  
RODGERS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 62518

FILED

NOV 14 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

In his July 20, 2012, petition, appellant claimed he received ineffective assistance of counsel. To prove ineffective assistance of 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 there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); see also *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985) (for a

---

<sup>1</sup>This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Lockett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

conviction based on a guilty plea, a petitioner must demonstrate 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). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. We give deference to the district 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).

First, appellant claimed that his counsel failed to investigate or review the case. Appellant failed to demonstrate deficiency or prejudice as he failed to provide any information that counsel would have uncovered through reasonably diligent investigation that would have altered his decision to enter a guilty plea. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). In addition, appellant obtained a substantial bargain by entry of his guilty plea, as the State agreed to drop two charges and to not seek adjudication as a habitual criminal. Therefore, the district court did not err in denying this claim.

Second, appellant claimed that his counsel failed to call expert witnesses for the preliminary hearing to testify regarding the victim's wounds or argue that there was insufficient evidence presented at the preliminary hearing to demonstrate probable cause. Appellant failed to demonstrate deficiency or prejudice because he waived his right to a preliminary hearing. Therefore, the district court did not err in denying this claim.

Third, appellant claimed that his counsel failed to ensure that the State complied with the guilty plea agreement. Appellant failed to demonstrate deficiency or prejudice because the State did comply with the

guilty plea agreement. Therefore, the district court did not err in denying this claim.

Fourth, appellant claimed that his counsel was ineffective for advising him to plead guilty despite no prior history of committing similar crimes. Appellant failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Appellant had a lengthy criminal history, including convictions involving the use of violence, and therefore, appellant failed to demonstrate that reasonable counsel would have advised him not to plead guilty based upon his criminal history. Appellant failed to demonstrate a reasonable probability he would have refused to plead guilty had counsel discussed appellant's criminal history in more detail with appellant. Therefore, the district court did not err in denying this claim.

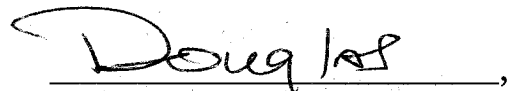
Fifth, appellant claimed that his counsel was not prepared for the sentencing hearing. Appellant failed to demonstrate deficiency or prejudice. Appellant made only a bare claim that counsel was not prepared for the sentencing hearing, which is insufficient to demonstrate that he was entitled to relief. *See Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. In addition, counsel argued that the district court should impose a favorable sentence and appellant failed to demonstrate a reasonable probability of a different outcome had counsel prepared further for the hearing or raised different arguments at the sentencing hearing. Therefore, the district court did not err in denying this claim.

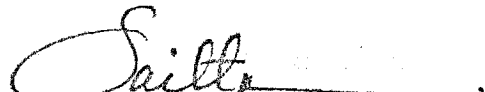
Sixth, appellant claimed that his counsel was ineffective for failing to file a notice of appeal. Appellant failed to demonstrate that his counsel's performance was deficient. Counsel testified at the evidentiary hearing that, while he did not specifically remember discussing an appeal

with appellant, it is his practice to discuss an appeal with his clients. Counsel testified that he did not recall appellant requesting him to appeal the conviction. Based on that testimony, the district court concluded that appellant had not been improperly deprived of a direct appeal. Substantial evidence supports that decision. *See Toston v. State*, 127 Nev. \_\_\_, 267 P.3d 795 (2001) (discussing circumstances in which counsel has duty to inform defendant who has pleaded guilty of right to appeal and duty to file a notice of appeal). Therefore, the district court did not err in denying this claim.<sup>2</sup>

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

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

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

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

---

<sup>2</sup>Appellant also appeared to claim that his appellate counsel in a separate case was ineffective. Challenges to a separate judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus filed in that district court case. *See* NRS 34.724(2)(b); NRS 34.738(1). We express no opinion as to whether petitioner could meet the procedural requirements of NRS chapter 34 for any subsequent petitions filed in the separate case.

cc: Hon. James M. Bixler, District Judge  
Bishop Lott  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk