

IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN CHARLES COLEMAN,
Appellant,
vs.
GREGORY SMITH, WARDEN, NEVADA
STATE PRISON,
Respondent.

No. 62982

FILED

APR 10 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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. Second Judicial District Court, Washoe County; Steven P. Elliott, Senior Judge.

On appeal from the denial of his petition filed on June 4, 2010, and his supplemental petition filed on October 27, 2011, appellant argues that the district court erred in denying his claims of 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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

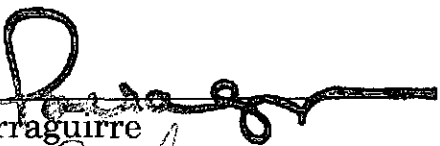
Appellant argues that trial counsel was ineffective for failing to communicate with him between the trial and sentencing and for failing to present any mitigating evidence at sentencing. Appellant contends that counsel should have called witnesses, such as his mother, fiancé, sister, and daughter, to testify as to his character. Appellant also contends that counsel should have argued for placement in a drug program as an alternative to a sentence of imprisonment as a habitual criminal and that counsel should have presented the psychological evaluation of appellant that showed that he was diagnosed with schizoaffective disorder and had not received treatment. Appellant fails to demonstrate that he was prejudiced. Given appellant's significant criminal history, appellant fails to demonstrate any reasonable probability of a different result at sentencing had counsel presented testimony of his character or the psychological evaluation. Notably, counsel informed the trial court of appellant's mental health issues and drug addiction and asked that appellant be placed in a drug or mental health program, but the trial court instead adjudicated appellant as a habitual criminal and sentenced him to life in prison with the possibility of parole after ten years.


Appellant also contends that the district court erred in denying his ineffective-assistance claim because the district court applied an incorrect legal standard when it stated appellant could not show prejudice because appellant's drug problems and mental health issues did not overcome his criminal history with regard to habitual criminal adjudication. We disagree with appellant's interpretation of the district court's statements. The record does not support appellant's argument that

the district court misunderstood its discretion to dismiss a habitual criminal count. Thus, we conclude that appellant fails to demonstrate that the district court erred in denying his claim of ineffective assistance of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Elliott Sattler, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk