

IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN LEN BLUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63098

FILED

NOV 14 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
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.¹ Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

In his petition filed on January 28, 2013, appellant claimed that 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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must

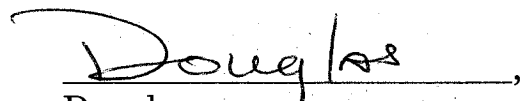
¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See *Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

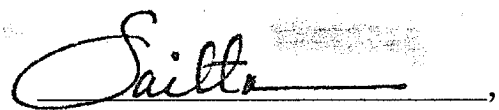
demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Appellant claimed that counsel was ineffective for arguing for a suspended sentence when he was ineligible for probation and for failing to argue for concurrent terms as the guilty plea agreement provided that the State would not oppose concurrent terms. Appellant failed to demonstrate that counsel was deficient or that there was a reasonable probability of a different outcome. It was within the district court's discretion to sentence appellant to consecutive terms. See NRS 176.035(1). After the district court announced consecutive terms, counsel pointed out that, as part of negotiations, the State had recommended concurrent terms. The district court acknowledged the recommendation but concluded that the imposed sentence was appropriate. Although appellant was not eligible for probation on the burglary count, he was eligible for probation on the robbery count. Appellant failed to demonstrate that he was prejudiced by counsel's argument at sentencing. We conclude that the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.


Douglas, J.


Saitta, J.

cc: Hon. Jessie Elizabeth Walsh, District Judge
Warren Len Blue
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk