

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DONNELL GREGG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63135

FILED

FEB 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malme
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; Valorie J. Vega, Judge.

Appellant argues that the district court erred in denying his claims of ineffective assistance of trial 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).

First, appellant argues that trial counsel was ineffective for failing to object to the State's filing of its notice of intent to seek habitual criminal adjudication less than 24 hours prior to sentencing. Appellant failed to demonstrate deficiency or prejudice. At the evidentiary hearing, trial counsel testified that, while the defense had been aware that the State intended to argue for habitual criminal adjudication two months prior to sentencing, he discussed with appellant the deficient notice by the State and the probability that the district court would grant a continuance to allow for adequate notice. Counsel testified that appellant indicated he wished to proceed with sentencing that day. Therefore, appellant failed to demonstrate that trial counsel's performance was objectively unreasonable. Furthermore, appellant failed to demonstrate prejudice as he failed to demonstrate that an objection to the notice would have had a reasonable probability of changing the outcome of the proceedings. Therefore, we conclude that the district court did not err in denying this claim.


Second, appellant argues that trial counsel was ineffective for failing to object to the State's failure to make a sufficient, affirmative showing that appellant was represented by counsel for his prior felonies. He contends that, had counsel objected, counsel could have exercised a reasonable amount of scrutiny in determining the validity of the convictions. Appellant failed to demonstrate deficiency or prejudice. At the evidentiary hearing, trial counsel testified that he discussed the prior felonies with appellant and that appellant confirmed each conviction and advised he had counsel at each. Therefore, appellant failed to demonstrate that trial counsel's performance was objectively unreasonable. Furthermore, appellant failed to demonstrate prejudice as he failed to demonstrate that an objection would have had a reasonable

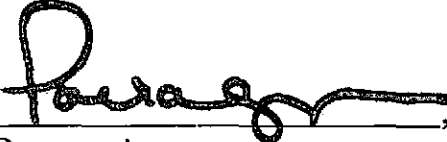
probability of changing the outcome of the proceedings. Therefore, we conclude that the district court did not err in denying this claim.


Third, appellant argues that trial counsel was ineffective for failing to file a notice of appeal. At the evidentiary hearing, counsel testified that appellant asked for his file but never asked for an appeal. Appellant was informed of his limited right to appeal in the guilty plea agreement. The district court determined that appellant did not make a clear and unambiguous articulation of a request to file an appeal or a notice of appeal. The district court's factual findings are supported by substantial evidence and are not clearly wrong, and we conclude that the district court did not err in denying this claim.

Next, appellant argues that the district court erred in denying his claim that he was denied due process when he did not receive notice of the State's intent to seek habitual criminal adjudication at least 15 days before he was sentenced. This claim fell outside the scope of claims permissible in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. NRS 34.810(1)(a). 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. Valorie J. Vega, District Judge
Law Offices of Gamage & Gamage
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk