

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH PIRL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63202

FILED

DEC 13 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Keith Pirl's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.¹

First, Pirl contends that the district court erred by denying his claim that counsel was ineffective for failing to object at sentencing or move for recusal based on the district court's demonstration of bias, expression of frustration, and refusal to consider mitigating evidence. When reviewing the district court's resolution of an ineffective-assistance

¹At the outset, we reject Pirl's contention that, absent testimony from the sentencing judge, the district court was unqualified to determine whether there was a reasonable probability that, but for counsel's alleged deficiencies, the result of the proceedings would have been different. We also reject Pirl's contention that the district court's Findings of Facts and Conclusions of Law is otherwise deficient. See NRS 34.830(1).

claim, 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). The district court denied these claims because it concluded that Pirl failed to demonstrate prejudice. We agree. See *Strickland v. Washington*, 466 U.S. 668, 688 (1984) (providing a two-part test for ineffective assistance of counsel claims); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Although the district court interrupted Pirl during his allocution, it gave him an opportunity to continue speaking and there is no indication that it had closed its mind to the presentation of the evidence or that, had counsel objected, the result of the proceeding would have been different. We conclude that the district court did not err by denying this claim without conducting an evidentiary hearing. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (a petitioner is entitled to an evidentiary hearing if he presents specific facts that are not belied by the record and, if true, would entitle him to relief).

Second, Pirl contends that the district court erred by denying his claim that counsel was ineffective for failing to investigate and present mitigating evidence regarding his mental health, including expert testimony. The district court denied this claim because it concluded that it was belied by the record. The record reflects that counsel informed the

court of an expert's conclusion that Pirl suffered from several mental health issues and discussed Pirl's troubled upbringing. To the extent that this claim was not belied by the record, Pirl raised only bare allegations unsupported by specific facts that, if true, would entitle him to relief. We conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.

Third, Pirl contends that the district court erred by denying his claim that counsel was ineffective for failing to object at sentencing to the highly suspect suggestion that if he was unable to pay restitution, his mother could pay in his stead. The claim raised below, however, asserted that by considering this suggestion the district court demonstrated impermissible bias. Because the claim as raised on appeal was not presented to or considered by the district court, we decline to consider it. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

Fourth, Pirl contends that the district court abused its discretion at sentencing by relying on highly suspect evidence and imposing an excessive sentence that constitutes cruel and unusual punishment. This claim was not presented to the district court below; therefore, we decline to consider it, *see Davis*, 107 Nev. at 606, 817 P.2d at 1173.

Having considered Pirl's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.²

Pickering, C.J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Lidia Stiglich, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Pirl's fast track statement does not comply with the Nevada Rules of Appellate Procedure because it appears that the text in the body of the brief, excluding headings, footnotes, and quotations, is not double-spaced, see NRAP 3C(h)(1); NRAP 32(a)(4). We caution Pirl's counsel, Karla K. Butko, that future failure to comply with the applicable rules when filing briefs in this court may result in the imposition of sanctions. See NRAP 3C(n).