

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHANON SOMEE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64316

**FILED**

**MAR 12 2014**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Malone*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

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

In his petition filed on April 16, 2013, appellant claimed that defense counsel was ineffective. Appellant was convicted pursuant to a guilty plea. To state a claim of ineffective assistance of counsel sufficient to invalidate a guilty plea, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulted in 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. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996). Both components of this inquiry must be shown, *Strickland*, 466 U.S. at 697, and petitioner must demonstrate the underlying facts by a

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<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).

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 claimed that defense counsel was ineffective for failing to properly explain the potential sentencing consequences of his guilty plea. He alleged that he accepted the plea agreement based on counsel's representations that, because he had eight years of credit for time served, he would begin serving the consecutive criminal-gang-enhancement sentence and would be eligible for release in two years. And he asserted that but for counsel's representations there was a reasonable probability that he would not have pleaded guilty. The district court found that this claim was belied by the record. Our review of the July 28, 2011, sentencing transcript reveals that appellant was fully apprised of the sentencing consequences of his plea agreement, he was given an opportunity to withdraw his guilty plea, and he chose to proceed with sentencing instead. We conclude that appellant failed to demonstrate that he was prejudiced by counsel's performance and the district court did not err by denying this claim.

Appellant also claimed that defense counsel was ineffective for failing to challenge the constitutionality of the deadly weapon and gang enhancement statutes<sup>2</sup> prior to advising him to enter the plea agreement. He argued that the enhancement statutes are applied indiscriminately and do not provide fair notice of the prescribed conduct and the additional

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<sup>2</sup>See NRS 193.165 (deadly weapon); NRS 193.168 (criminal gang).

penalty. And he asserted that if counsel had challenged the enhancement statutes the result in his case would have been different because his conviction would not have been enhanced, he would not be serving a consecutive sentence, and he would have been eligible for parole much sooner. The district court found that the plain language of both enhancement statutes provided appellant with fair notice that the use of a deadly weapon during a criminal act and criminal acts committed with the purpose of promoting, furthering, or aiding a criminal gang are forbidden and such acts would increase the severity of a sentence for the underlying crime. The district court further found it would have rejected any motion challenging the enhancements to appellant's crimes. We conclude that appellant has failed to demonstrate that a challenge to the constitutionality of the enhancement statutes had a reasonable probability of success and the district court did not err by denying this claim.

Having concluded that appellant is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Cherry, J.  
Cherry

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<sup>3</sup>Based on our review of the record, we conclude that the district court did not abuse its discretion by declining to appoint counsel and determining that an evidentiary hearing was unnecessary.

cc: Hon. Michelle Leavitt, District Judge  
Chanon Somee  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk