

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE RAYMUNDO GUTIERREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65671

FILED

FEB 24 2015

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 appellant's post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant argues that the district court erred by denying his claim that defense counsel was ineffective for failing to impeach the victim's mother's testimony at trial with her prior inconsistent police statement. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court considered the briefs, transcripts, and documents on file. It found that the testimony that defense counsel elicited from the victim's mother on cross-examination provided the same information that the mother provided in her police statement. It further found that counsel's decision as to how to best cross-examine a witness was purely strategic in nature and counsel's performance did not fall below an objective standard of reasonableness in this regard.

The record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong, and we conclude that appellant has not demonstrated that the district court erred as a matter of law. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting the test in *Strickland*); *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (observing that "[t]actical decisions are virtually unchallengeable absent extraordinary circumstances").

Appellant also argues that the district court erred by denying his claims without first conducting an evidentiary hearing. He appears to focus on his claim that counsel was ineffective for failing to impeach the victim's mother.


A petitioner is entitled to an evidentiary hearing only if he asserts specific factual allegations that are not belied or repelled by the record and that, if true, would entitle him to relief. *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). "We review the district court's determination that a petitioner is not entitled to an evidentiary hearing for abuse of discretion." *Stanley v. Schriro*, 598 F.3d 612, 617 (9th Cir. 2010).

The district court considered appellant's ineffective-assistance-of-counsel claims and found that they were bare allegations or belied by the record. The record supports the district court's findings. Moreover,

appellant has failed to make any showing that the district court abused its discretion in this regard.

Having concluded that appellant is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk