

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN RICHARD WEHR,
Appellant,
vs.
WARDEN BRIAN WILLIAMS,
Respondent.

No. 66279

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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


Appellant claims that the district court erred by denying his claim that his trial counsel was ineffective for failing to properly advise him of the definition of intent. He asserts that, had he been properly advised, he would have accepted the plea offer, which would have reduced the sentence he faced.


To prove ineffective assistance of trial 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).

The district court found that, because the record demonstrated that counsel explained the elements of burglary and appellant understood the definition of intent, appellant failed to demonstrate that his counsel was deficient. The district court also found that appellant did not face more severe consequences as a result of his decision to proceed to trial. Appellant faced exactly the same charge and sentencing potential whether he proceeded to trial or pleaded guilty. The district court therefore concluded that appellant failed to demonstrate that he was prejudiced. We conclude that the district court's findings are supported by substantial evidence and are not clearly wrong, and the district court did not err as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk