IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADRYAN ARTURO MARTINEZ, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 66282
ADRYAN ARTURO MARTINEZ, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 66287

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order dismissing a post-conviction petition for a writ of habeas corpus that encompassed two separate cases. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant was arrested for various property crimes that he committed as a juvenile. He was certified as an adult and pleaded guilty to burglary and possession of stolen property. Appellant subsequently pleaded guilty in another case to leaving the scene of an accident involving personal injury, a crime that he committed while on supervised bail and after turning 18 years of age. The two cases were consolidated for sentencing.

The district court continued sentencing so that appellant could undergo a psychiatric evaluation. The district court had concerns about appellant's behavior in the juvenile system, the manner in which he committed his crimes, and his apparent failure to understand how his

crimes had impacted the victims. The district court felt that a psychological evaluation was necessary in order to make an informed sentencing decision.

At sentencing, after considering the psychological evaluation and the arguments of counsel, the district court sentenced appellant to serve two consecutive prison terms of 36 to 120 months and a concurrent prison term of 36 to 120 months. Although appellant did not appeal from his convictions, he did file a timely post-conviction petition for a writ of habeas corpus.

Appellant claims that the district court erred by dismissing his habeas petition without an evidentiary hearing. 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, 1301, 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).

Here, the district court determined that appellant was not entitled to an evidentiary hearing because his claims were belied by the record. Appellant has not demonstrated that the district court erred in this regard. We note that the record reveals that appellant acknowledged that he understood the difference between concurrent and consecutive sentences after the district court explained it to him, and that defense counsel correctly advised appellant that the prison sentence for burglary while in possession of a firearm is 2 to 15 years. *See* NRS 205.060(4). And we conclude that the district court did not abuse its discretion in determining that an evidentiary hearing was unwarranted.

Appellant also claims that the district court erred by dismissing his claims of ineffective assistance of counsel. He asserts that defense counsel was ineffective for failing to object to the use of his juvenile record in the presentence investigation report and by failing to raise the juvenile record issue in an appeal. 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).

Here, the district court found, among other things, that (1) there was nothing in the record to indicate that appellant's juvenile records were ever sealed, (2) appellant did not allege that he asked defense counsel to file a direct appeal, and (3) appellant did not allege that he expressed dissatisfaction with his conviction sufficient to sustain a claim that defense counsel knew or should have known that he wanted to appeal his conviction.

Our review of the record reveals that the district court's findings are supported by substantial evidence and are not clearly wrong, and appellant has not demonstrated that the district court erred as a matter of law.[1] *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); *Tosten v.*

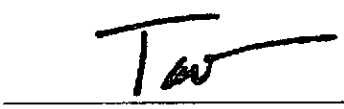
---

[1]NRS 62H.030(3)(b) allows "[r]ecords which have not been sealed and which are required by the Division of Parole and Probation for preparation of presentence investigations and reports pursuant to NRS 176.135" to be inspected without a court order. Further, to the extent that the parties relied upon *Clay v. Eighth Judicial Dist. Court*, 129 Nev. ___, 313 P.3d 232 (2013), that opinion has been withdrawn and is no longer good law. *See* SCR 123.

State, 127 Nev. ___, ___, 267 P.3d 765, 800 (2011) (identifying the circumstances under which trial counsel has a duty to file an appeal); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996) (applying the test in *Strickland* to a conviction based on a guilty plea); *see generally* NRS 62H.170 (discussing the effect of sealing records and the inspection of sealed records in certain circumstances).

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. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk