

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD EARL NICHOLSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66309

FILED

AUG 25 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
CHIEF 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. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.


Appellant Richard Nicholson claims the district court erred by denying his habeas petition. Nicholson asserts defense counsel was ineffective for failing to investigate Solomon Genovese as an exculpatory witness and argues the district court erred in finding defense counsel made multiple attempts to locate Genovese.


To prevail on a claim of ineffective assistance of counsel, a petitioner must show that (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (internal quotation marks omitted). "To overcome that presumption, a [petitioner] must show that counsel failed to act reasonably considering all the circumstances." *Cullen v. Pinholster*, 563

U.S. ___, ___, 131 S. Ct. 1388, 1403 (2011) (internal alteration and quotation marks omitted). When reviewing a district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong 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).

Here, the district court held an evidentiary hearing and found defense counsel "made multiple attempts to locate Genovese, including asking [Nicholson] for Genovese's contact information and asking his investigator to locate Genovese." The record plainly demonstrates the court's finding is supported by substantial evidence and is not clearly wrong. We conclude the court did not err by denying Nicholson's petition because Nicholson failed to demonstrate defense counsel's representation fell below an objective standard of reasonableness. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance of counsel). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of C. Conrad Claus
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk