

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES WESLEY PRICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66721

FILED

MAR 17 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 a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

In his petition filed on June 5, 2014, appellant claimed that his counsel was ineffective at his probation revocation proceeding.² To prove ineffective assistance of 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

¹This 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).

²The Nevada Supreme Court has recognized that an ineffective-assistance-of-counsel claim will lie only where the defendant had a constitutional or statutory right to the appointment of counsel. *See McKague v. Warden*, 112 Nev. 159, 164-65, 912 P.2d 255, 258 (1996). Here, the district court apparently determined that appellant was entitled to the effective assistance of counsel because the district court reached the merits of the claims. *See Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973).

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).

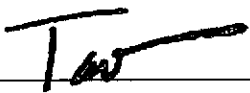
Appellant claimed that counsel was ineffective for failing to ask for a continuance when the State would not agree to a reinstatement of probation. Appellant also claimed that counsel was unprepared, failed to introduce evidence showing how good he was on probation up until these violations, and failed to investigate appellant's claim that he was told he could drink alcohol. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced. The evidence that appellant wanted counsel to introduce regarding his behavior on probation and his future dangerousness, was presented through testimony and argument. Further, the supervising probation officer testified that he did not tell appellant he could drink alcohol and that none of his officers would have told him that. Appellant has failed to identify any witnesses that counsel should have contacted to testify that he was told he could drink alcohol. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Finally, appellant failed to demonstrate a reasonable probability of a different outcome at the hearing because he conceded that he committed

the violations. Therefore, the district court did not err in denying this claim.

Appellant also claimed that the supervising probation officer may have committed perjury at the hearing. This claim should have been raised on direct appeal from his amended judgment of conviction and appellant fails to demonstrate good cause and prejudice for his failure to do so. See NRS 34.810(1)(b)(2). Therefore, the district court did not err in denying this claim, and we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

³We have reviewed all documents that appellant has submitted to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Eighth Judicial District Court, Dept. 2
James Wesley Price
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk