

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PRESTON JAKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66813

FILED

MAR 17 2015

TRACEY K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Douglas W. Herndon, Judge.

In his petition filed on July 29, 2014, appellant claimed that his counsel was ineffective. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by

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).

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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).

First, appellant claimed that trial counsel was ineffective for failing to research, investigate, or prepare for trial. Appellant claimed that counsel failed to acquire medical documentation of the sexual assault and did not investigate his "story." Appellant failed to support this claim with specific facts that, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 636 P.2d 222, 225 (1984). Therefore, the district court did not err in denying this claim.


Second, appellant claimed that trial counsel was ineffective because counsel had a conflict of interest. Specifically, appellant claimed that trial counsel had previously prosecuted sexual offenders, and therefore, was not looking out for his best interests. Appellant failed to demonstrate that there was an actual conflict of interest. See *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). Appellant failed to demonstrate his counsel was placed in a situation conducive to divided loyalties, *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992), or that his counsel actively represented conflicting interests, *Burger v. Kemp*, 483 U.S. 776, 783 (1987). Therefore, the district court did not err in denying this claim.


Third, appellant claimed that trial counsel was ineffective for failing to show the entire plea agreement to appellant before he pleaded guilty. He claimed that counsel did not inform him that he was subject to lifetime supervision and that counsel told him he would receive a sentence of 2 to 5 years. Appellant failed to demonstrate that counsel was deficient or that he was prejudiced because this claim lacks merit. At the plea canvass, the district court specifically asked appellant if he understood

that he was subject to lifetime supervision. Similarly, he was informed by the district court that the minimum he could receive was 2 years and the maximum he could receive was 20 years.² He also indicated that he had not received any promises regarding his sentence. Therefore, the district court did not err in denying this claim.

Having considered appellant's claims and concluded that no relief is warranted, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²To the extent that appellant claimed that his plea was invalid because he thought the deal was for 2 to 20 years; this claim is also without merit. See *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); see also *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). He was informed of the minimum and maximum sentences and that the district court had the discretion to sentence him within that range.

cc: Hon. Douglas W. Herndon, District Judge
Preston Jakes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk