

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LARRY DARNELL HOWARD, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66904

FILED

APR 15 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT.
BY *Tracie K. Lindeman*
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; Valerie Adair, Judge.

In his petition filed on May 28, 2014, appellant Larry Howard, Jr., claimed that his counsel was ineffective at the probation revocation hearing.² To prove ineffective assistance of counsel, a petitioner must

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 Howard was entitled to the effective assistance of counsel because the district court addressed the merits of Howard's claims. See *Gagnon v. Scarpelli*, 411 U.S. 778, 790-91 (1973) (explaining when a defendant is entitled to counsel during probation revocation proceedings).


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.


First, Howard claimed that his counsel was ineffective for coercing him into stipulating that he violated the terms of his probation. Howard failed to demonstrate that his counsel's performance was deficient or that he was prejudiced. Howard personally informed the district court that he wished to stipulate to the violation and he gave no indication that he was coerced or otherwise did not wish to stipulate to the violation. Howard failed to demonstrate a reasonable probability of a different outcome had he not agreed to stipulate to the violation as the record established that Howard did not follow the conditions of his probation. *See Lewis v. State*, 90 Nev. 436, 438, 529 P.2d 796, 797 (1974). Therefore, the district court did not err in denying this claim.

Second, Howard claimed that his counsel was ineffective for failing to ensure that he received the entire 250 days of credits he believed he had earned on probation. Howard failed to demonstrate either deficiency or prejudice for this claim. Howard's claim relied upon a report from his probation officer explaining that Howard had earned 250 days of probationary deductions during his probation. *See* NRS 176A.500(6). The record demonstrates that Howard was not entitled to the deductions because he did not comply with the terms of his probation. *See* NRS

176A.500(5). Therefore, the district court did not err in denying this claim.

Having concluded that Howard is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Larry Darnell Howard, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk