

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN MACNEAL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66976

**FILED**

**APR 14 2015**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
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.<sup>1</sup> Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In his petition filed on April 29, 2014, appellant Darren MacNeal claimed that counsel was ineffective. 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); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (adopting the *Strickland* test). Both prongs of the ineffective-assistance inquiry must be shown. *Strickland*, 466 U.S. at 697. When reviewing the district court's resolution of

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<sup>1</sup>This appeal has been submitted for decision without oral argument, see 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).


ineffective-assistance claims, we give deference to the court's factual findings if they are 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).

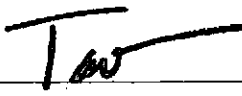
MacNeal claimed that counsel was ineffective for failing to correct errors in his presentence investigation report (PSI). The district court found that MacNeal failed to provide any support for his claims that the PSI was incorrect and that nothing in the record supported his assertion that the district court imposed consecutive sentences as a result of the alleged errors. We conclude that the court did not err in denying this claim because it was nothing more than a bare allegation. See *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (explaining that a petitioner's habeas claims must consist of more than bare allegations).

MacNeal also claimed that counsel was ineffective for failing to argue for concurrent sentences and, instead, arguing for consecutive sentences. The district court found that counsel had tried to persuade the court to place MacNeal on probation by suggesting that consecutive sentences could be imposed in the event his probation was revoked. The court also found that MacNeal made no showing that, but for counsel's decision to argue for probation, he would have received concurrent sentences. We conclude that the court did not err in denying this claim because MacNeal failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness.

Having concluded that the district court did not err by denying MacNeal's petition, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Stefany Miley, District Judge  
Darren MacNeal  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk