

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDUARDO LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67058

FILED

JUN 16 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.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition filed on January 30, 2014, appellant Eduardo Lopez claimed defense counsel was ineffective.

To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness and (2) a reasonable probability, but for counsel's errors, he 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 prongs of the ineffective-assistance inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We review the district court's

¹This appeal has been submitted for decision without oral argument, see NRAP 34(f)(3), and we conclude 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).

resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Lopez claimed counsel was ineffective for advising him there was a good chance he would win this case and thereby causing him to reject a plea offer of 1 to 6 years. The district court found this claim was belied by the record, which demonstrates Lopez rejected the State's initial offer and counsel tried at least once more to give Lopez the opportunity to accept the lower-level trafficking plea offer. The court's findings are supported by substantial evidence and are not clearly wrong, and we conclude the court did not err in denying this claim because Lopez failed to show counsel's performance was deficient in this regard.


Second, Lopez claimed counsel was ineffective for allowing him to plead guilty while he was under the influence of psychotropic drugs. The district court found this claim was conclusory and belied by the record because the written plea agreement, the plea canvass, and statements Lopez made during sentencing all demonstrate he entered his plea knowingly, voluntarily, and intelligently. The court's findings are supported by substantial evidence and are not clearly wrong, and we conclude the court did not err in denying this claim because Lopez failed to show counsel's performance was deficient in this regard.

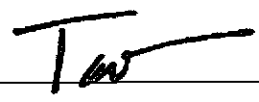
Third, Lopez claimed counsel was ineffective for failing to perfect an appeal. The district court held an evidentiary hearing on this claim and made the following findings: counsel testified credibly, counsel and Lopez discussed an appeal, counsel advised Lopez there were no grounds for an appeal, and Lopez did not make a sufficient showing

contrary to counsel's testimony. The record demonstrates the court's findings are supported by substantial evidence and are not clearly wrong. We conclude the court did not err in denying this claim because Lopez failed to demonstrate he affirmatively sought an appeal after being informed there were no grounds for relief. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance of counsel).

Having concluded the district court did not err by denying Lopez' petition, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Eduardo Lopez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk