

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLE THERESA ST. PEARRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68075

FILED

DEC 29 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Nicole Theresa St. Pearre argues the district court erred in denying her claim of ineffective assistance of counsel as raised in her October 3, 2014, petition. 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 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).

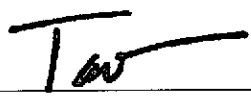
St. Pearre argues her counsel was ineffective for failing to file a notice of appeal and for misadvising her regarding her right to a direct appeal. St. Pearre fails to demonstrate her counsel's performance was deficient. "[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction." *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011).


Here, the district court conducted an evidentiary hearing, where St. Pearre and her counsel testified. Counsel testified he explained to St. Pearre her right to pursue a direct appeal, but after the sentencing hearing in this case, St. Pearre's focus turned to her federal court proceedings. Counsel also testified St. Pearre did not ask him to file a direct appeal until after the timely-appeal period. St. Pearre testified she knew she only had 30 days to file a notice of appeal and did not ask counsel to file a direct appeal until after the passing of the timely appeal period. The district court concluded the testimony established counsel did not have a duty to file a notice of appeal, St. Pearre did not express the type of dissatisfaction during the timely-filing period which would warrant the filing of a notice of appeal, and St. Pearre was not improperly deprived of a direct appeal. Substantial evidence supports that decision. *See id.* at 980, 267 P.3d at 801 (stating that one of the factors to consider in an appeal-deprivation claim is "whether the defendant indicated a desire to

challenge his sentence within the period for filing an appeal"). Therefore, the district court did not err in denying the petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk