

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT G. STAP,

Appellant,

vs.

WARDEN, NEVADA STATE PRISON,  
JACKIE CRAWFORD,

Respondent.

No. 36286

**FILED**

SEP 20 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order dismissing appellant's post-conviction petition for a writ of habeas corpus.

On August 24, 1998, the district court convicted appellant, pursuant to a guilty plea, of attempted lewdness with a child under the age of fourteen. The district court sentenced appellant to serve 36 to 96 months in the Nevada State Prison. The district court entered an amended judgment of conviction on December 1, 1998. Appellant did not pursue a direct appeal.

On August 16, 1999, appellant filed a proper person post-conviction petition for a writ of habeas corpus. The district court appointed counsel to represent appellant, conducted an evidentiary hearing, and dismissed the petition. This timely appeal followed.

Appellant contends that the district court erred in rejecting his claim that he received ineffective assistance of counsel at sentencing. In particular, appellant claims that counsel failed to present several witnesses who could have given mitigating testimony and failed to provide the sentencing court with a favorable letter from an acquaintance of appellant. Appellant further argues that he was prejudiced because he would have received a less severe sentence had counsel presented this evidence at sentencing. We conclude that appellant's contention lacks merit.

A claim of ineffective assistance of counsel presents a mixed question of law and fact and is therefore subject to independent review. *State v. Love*, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). However, a district court's factual findings regarding a claim of ineffective assistance are entitled to deference so long as they are supported by substantial evidence and are not clearly wrong. See *Riley v. State*, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

To state a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. See *Strickland v. Washington*, 466 U.S. 668 (1984). "Deficient" assistance of counsel is representation that falls below an objective standard of reasonableness. Id. at 688. To establish prejudice based on the deficient assistance of counsel at sentencing, a defendant

must show that but for counsel's mistakes, there is a reasonable probability that the sentence imposed would have been different. See id. at 694. The court need not consider both prongs of the Strickland test if the defendant makes an insufficient showing on either prong. Id. at 697.


Having reviewed the documents submitted with this appeal and giving the appropriate deference to the district court's factual findings, we conclude that the district court did not err in dismissing appellant's post-conviction petition. The district court found that the information that would have been provided through the testimony of appellant's wife and the victim (appellant's daughter) was adequately covered in the presentence investigation report and in the letter from the victim that was attached to the report. The court further found that counsel asked appellant's wife whether she wanted to testify at sentencing and she declined. As for the other witnesses that appellant claims counsel should have called to testify at sentencing,<sup>1</sup> the district court found that counsel made a reasonable tactical decision not to call the witnesses because they were in poor health and would not have furthered the defense presentation at sentencing. These findings are supported by substantial evidence and appellant has not demonstrated that they are clearly wrong. Additionally, counsel testified that he was

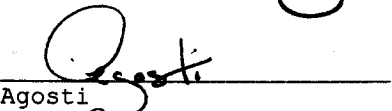
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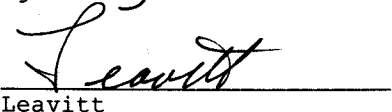
<sup>1</sup>These witnesses did not testify at the evidentiary hearing.

aware of the letter from appellant's acquaintance and had concluded that it would not be helpful and was of questionable credibility given the nature of the charges against appellant. The testimony at the evidentiary hearing and the district court's findings support the conclusion that counsel was not deficient.<sup>2</sup> We therefore conclude that the district court did not err in dismissing appellant's petition and we

ORDER this appeal dismissed.

  
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Shearing J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Lyon County District Attorney  
Williams & Emm  
Lyon County Clerk

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<sup>2</sup>We note that the record indicates that counsel presented significant mitigating evidence and information at sentencing, including recommendations from two experts that appellant could be placed on probation, the letter from the victim, and information regarding appellant's sessions with a family counselor.