

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ARTHUR DANIEL MAYO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68575.

**FILED**

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracie K. Lindeman*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition filed on February 9, 2015, appellant Arthur Mayo claimed the State violated his right to due process by failing to give formal notice of its intent to seek habitual criminal status. Mayo waived this claim by failing to raise it on direct appeal. *See Franklin v. State*, 110 Nev. 750, 751-52, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999).

Mayo also claimed he received ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it

---

<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Both prongs of the ineffective-assistance inquiry must be shown. *Id.* at 697. We review the district court's 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).

The district court determined that Mayo raised three claims of ineffective assistance of counsel and made the following findings:

In his first claim, Mayo simply claimed defense counsel was ineffective at sentencing. He did not support this claim with specific factual allegations that would entitle him to relief. And, even if his claim could be construed as challenging counsel's ineffectiveness based on her failure to object to the State's notice of intent to seek habitual criminal status, he would not be entitled to relief because the State is allowed to file a notice of intent before sentencing and counsel is not ineffective for failing to make futile objections.

In his second claim, Mayo claimed defense counsel was ineffective for failing to investigate his prior convictions. He further suggested an investigation would have revealed that some of his convictions were the product of a global plea negotiation and should have been treated as a single felony conviction for purposes of the habitual criminal adjudication. This claim is belied by the record because counsel reviewed the prior convictions and found no mitigating factors existed, counsel informed the court that many of the prior convictions were for

non-violent offenses and were stale, and each of the prior convictions was supported by a separate judgment of conviction.

In his third claim, Mayo claimed appellate counsel was ineffective for failing to raise due process arguments regarding the State's failure to provide adequate notice of its intent to seek habitual criminal status. This claim is without merit because he failed to show the omitted issue had a reasonable probability of success on appeal because the State was permitted to file the notice separately and defense counsel examined the prior convictions and found them to be valid.


Our review of the record reveals the district court's factual findings are supported by substantial evidence and the requirements of due process were met. Mayo stipulated to small habitual criminal treatment and a sentence of 5 to 12.5 years in his written plea agreement with the State, and, because NRS 207.016(6) allows for such agreements between the parties, Mayo was on notice that the State would seek punishment under the habitual criminal statute if he was arrested on new charges or failed to appear for the presentence investigation.

We conclude the district court did not err by denying Mayo's petition for a writ of habeas corpus without an evidentiary hearing. See *Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008) (explaining that claims must consist of more than bare allegations and a petitioner is only entitled to an evidentiary hearing if he has asserted specific factual allegations that are not belied or repelled by the record and, if true, would entitle him to relief); *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006) (stating counsel is not ineffective for failing to

make futile objections); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying the *Strickland* test to ineffective appellate counsel claims). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

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

cc: Hon. Valerie Adair, District Judge  
Arthur Daniel Mayo  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

---

<sup>2</sup>We have reviewed all documents Mayo has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Mayo has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.