

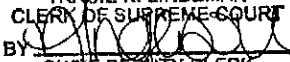
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER JASON HELFRICH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68538

**FILED**

**FEB 17 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; David R. Gamble, Senior Judge.

Appellant Peter Helfrich claims the district court erred by denying his claims of ineffective assistance of counsel that were raised in his August 14, 2014, petition and his December 29, 2014, and April 14, 2015, supplemental petitions. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his 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, but for counsel's errors, petitioner 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). To prove ineffective assistance of counsel at sentencing, 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). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. We give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the district court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Helfrich claims counsel was ineffective for failing to find out the true identity of the victim. Helfrich fails to demonstrate counsel was deficient or resulting prejudice. Counsel did investigate whether the victim had been using a fake identity. Counsel testified at the evidentiary hearing the investigation was unsuccessful. Further, Helfrich failed to provide the district court with any evidence the victim was incorrectly identified. Therefore, Helfrich fails to demonstrate a reasonable probability he would not have pleaded guilty had counsel further investigated. Accordingly, the district court did not err in denying this claim.


Second, Helfrich claims counsel was ineffective for failing to file a motion to recuse the district court judge based on the fact Helfrich and several other defendants had sued the judge in federal court. Helfrich fails to demonstrate counsel was deficient or resulting prejudice. Counsel made an oral motion at sentencing to recuse the judge and presented a witness in support of the motion. The district court denied the motion. Further, Helfrich fails to demonstrate a reasonable probability of a different outcome had counsel filed a written motion for recusal. Helfrich fails to demonstrate the judge was biased or held any animosity towards him based on the lawsuit. See Nevada Code of Judicial Conduct Rule 2.11(A)(1); *City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 649, 940 P.2d 134, 137 (1997) ("a party or his attorney should not be permitted to cause the disqualification of a judge by virtue of

his or her own intentional actions"); *see also Andersen v. Roszkowski*, 681 F.Supp. 1284, 1289 (N.D. Ill. 1988) (holding the automatic disqualification of a judge is not required based on a litigant suing or threatening to sue). The district court did not appear to know much about Helfrich outside the facts of the case, was very thoughtful in deciding the potential sentence, and outlined valid reasons based on the facts of the case for imposing the sentence. Therefore, the district court did not err in denying this claim.

Finally, Helfrich claims counsel was ineffective for failing to interview and present witnesses in mitigation at sentencing. Helfrich fails to demonstrate counsel was deficient or resulting prejudice. Counsel testified he did interview several of the witnesses proposed by Helfrich but after interviewing them, determined their testimony would not be helpful. Tactical decisions such as this one "are virtually unchallengeable absent extraordinary circumstances," *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989), which Helfrich did not demonstrate. Further, Helfrich fails to demonstrate a reasonable probability of a different outcome at sentencing had these witnesses testified. Helfrich only provided his own self-serving statements regarding what these witnesses would have testified about and there was no evidence or testimony presented at the evidentiary hearing to support those self-serving statements. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Robert W. Lane, District Judge  
Hon. David R. Gamble, Senior Judge  
David H. Neely, III  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk