

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PETER PAUL CASTELLANOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68512

FILED

FEB 17 2016

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

In his petition filed on March 3, 2015, appellant Peter Castellanos 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 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).

¹This 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).

First, Castellanos claimed both of his defense counsel were ineffective for failing to perfect an appeal. The district court conducted an evidentiary hearing on this claim and found defense counsel were not ineffective in this regard. Castellanos' claims he attempted to contact defense counsel and he left a message at their law office were not credible and they were contradicted by defense counsels' testimony. Defense counsel testified neither Castellanos nor his family requested an appeal. And the fact Castellanos was able to send letters requesting his file demonstrates he knew how to contact defense counsel.


Second, Castellanos claimed defense counsel were ineffective for failing to investigate multiple defenses, and he asserted defense counsel ignored the exculpatory evidence he provided. The district court found Castellanos failed to explain how a better investigation would have provided a more favorable outcome and failed to identify the exculpatory evidence he presented to defense counsel.

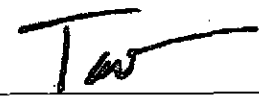
Third, Castellanos claimed defense counsel were ineffective for failing to object to the numerous errors in his presentence investigation report and his psychosexual evaluation. The district court found Castellanos failed to identify the alleged errors in these reports and therefore his claim was simply a bare allegation. Moreover, because Castellanos was originally charged with twelve criminal offenses, including multiple counts of sexual assault, the district court would not have sentenced him to probation or minimum incarceration.


The record demonstrates the district court's factual findings are supported by substantial evidence and are not clearly wrong. We conclude the district court did not err by rejecting Castellanos' request for counsel and denying his habeas petition. See NRS 34.750(1); *Means v.*

State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claims of ineffective assistance of counsel by a preponderance of the evidence); *see also Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 799-800 (2001) (“[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.”); *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming that counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

²We have reviewed all documents Castellanos has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Castellanos 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.

cc: Hon. Douglas W. Herndon, District Judge
Peter Paul Castellanos
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk