


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE ALLEN ROSASCHI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69507

FILED

JUN 21 2016

FRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court dismissing in part and denying in part a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Appellant Jamie Rosaschi claims the district court erred by denying his claims that counsel was ineffective for failing to timely provide him with his presentence investigation report (PSI) and for failing to inform him any additions and corrections must be made at the time of sentencing.

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).


We conclude the district court correctly found counsel was deficient for failing to provide the PSI in a timely manner and for failing to inform Rosaschi he needed to object to any errors at sentencing. We also conclude the district court correctly determined there was no resulting prejudice. The errors cited by Rosaschi regarding aliases, birthdates, and the two out-of-state convictions did not demonstrate resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of at sentencing would have been different. We note other than Rosaschi's testimony that the two out-of-state convictions were incorrect, Rosaschi failed to produce any evidence they were incorrect. Further, even if these two convictions were incorrect, Rosaschi still has four other felony convictions and he fails to demonstrate the result of the sentencing hearing would have been different. Therefore, the district court did not err in denying these claims.

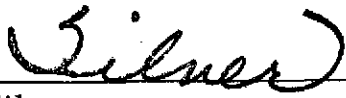
To the extent Rosaschi claims counsel's failure to object to the errors may have prejudiced him on direct appeal and may have prejudiced him in prison, Rosaschi did not raise or argue these claims of prejudice below. Rosaschi does not demonstrate cause for his failure to raise these claims before the district court, and we decline to consider them in the first instance in this appeal. See *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

Next, Rosaschi argues the district court erred by dismissing his claim that counsel was ineffective and, therefore, his plea of guilty was not entered knowingly, voluntarily, and intelligently. Rosaschi claims the district court should not have dismissed this claim and instead should have allowed counsel to supplement it. The district court dismissed the claim because counsel's candid advice about the potential sentence Rosaschi faced was not deficient performance. Rosaschi did not file a motion to supplement the claim below. Rosaschi fails to argue the district court erred by dismissing this claim on this basis, *see Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987), and fails to provide specific facts to support his argument he should have been allowed to supplement his claim, *see Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). We conclude Rosaschi fails to demonstrate the district court erred by dismissing this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Lynne K. Simons, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk