

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESUS RODAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69946

FILED

AUG 17 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: S. Young
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. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Jesus Rodas argues the district court erred by denying his claim raised in his October 20, 2014, petition that counsel was ineffective for failing to file an appeal from his judgment of conviction.

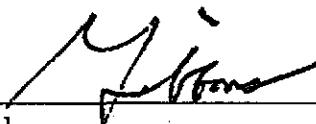
To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings 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*). "Generally, both components of the inquiry must be shown, but in some instances, such as when the petitioner has been deprived of the right to appeal due to counsel's deficient performance, the second component (prejudice) may be presumed." *Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795, 799 (2011) (internal citations omitted). 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).


"[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, and that failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." *Toston*, 127 Nev. at 978, 267 P.3d at 800.

After hearing testimony at the evidentiary hearing, the district court found it was counsel's practice to file a direct appeal if a defendant requests a direct appeal be filed. Because no appeal was filed, the district court concluded Rodas did not specifically request counsel to file an appeal and counsel was not ineffective for failing to file a direct appeal. We conclude substantial evidence supports the decision of the district court and the district court did not err as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Oronoz, Ericsson & Gaffney, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk