

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHET DUDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70090

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; Michael Villani, Judge.

Appellant Chet Duda argues the district court erred by denying his claim raised in his June 29, 2014, petition that counsel was ineffective for failing to file an appeal from his judgment of conviction. Specifically, he claims he sent letters to counsel 10 days and 35 days after his judgment of conviction was filed asking her to file an appeal. No appeal was ever filed.

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 holding an evidentiary hearing, the district court found counsel did not receive communication from Duda that he wanted to appeal. Counsel testified she was very meticulous about obtaining and reviewing inmate correspondence and had she received a letter from Duda requesting an appeal, she would have immediately filed a notice of appeal as long as it was timely. Counsel also testified she received other communication from Duda during this time frame regarding a motion for return of seized property and she filed and litigated that motion. The district court specifically found counsel to be credible. The district court concluded counsel was not ineffective for failing to file an appeal from the judgment of conviction and sentence.

After reviewing the record on 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. Michael Villani, District Judge
Matthew D. Carling
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk