

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES MATTHEW WIRTH,  
Appellant,  
vs.  
ROBERT LEGRAND, WARDEN; AND  
THE STATE OF NEVADA,  
Respondents.

No. 69734

**FILED**

SEP 28 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 dismissing and denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Appellant Charles Wirth claims the district court erred by denying his claims of ineffective assistance of counsel raised in his petition filed on March 2, 2013, and in his supplemental petitions filed on August 1, 2013, and August 26, 2013. 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). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the 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).

First, Wirth claims counsel was ineffective for failing to hire an investigator to interview witnesses prior to them testifying at the *Petrocelli*<sup>1</sup> hearing. The district court concluded Wirth failed to demonstrate counsel was deficient or resulting prejudice. We conclude the district court's decision is supported by substantial evidence because Wirth failed to support his claim with specific facts that, if true, would entitle him to relief. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). He failed to allege what evidence the witnesses would have provided to an investigator had the investigator been hired. Wirth also failed to demonstrate a reasonable probability he would not have pleaded guilty had counsel hired an investigator. Therefore, the district court did not err in denying this claim.


Second, Wirth claims counsel was ineffective for failing to retain an expert regarding the victim's medical records. The district court concluded Wirth failed to demonstrate counsel was deficient or resulting prejudice. We conclude substantial evidence supports the decision of the district court because Wirth failed to support this claim with specific facts that, if true, would entitle him to relief. *Id.* He failed to allege what testimony an expert would have provided to refute the medical evidence that would have been presented by the State. Wirth also failed to demonstrate a reasonable probability he would not have pleaded guilty had counsel hired an expert. Therefore, the district court did not err in denying this claim.

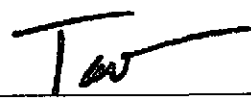
---

<sup>1</sup>*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

Finally, Wirth claims counsel was ineffective for failing to file a motion to suppress the victim's diary. The district court concluded Wirth failed to demonstrate counsel was deficient or resulting prejudice. We conclude substantial evidence supports the decision of the district court because Wirth failed to support this claim with specific facts that, if true, would entitle him to relief. *Id.* Further, Wirth failed to demonstrate a motion to suppress would have been successful, and counsel is not ineffective for failing to file futile motions. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). Wirth also failed to demonstrate a reasonable probability he would not have pleaded guilty had counsel filed a motion to suppress. 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. Kimberly A. Wanker, District Judge  
David H. Neely, III  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk