


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERRENCE TERRELL HATCHER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70271

**FILED**

NOV 17 2016

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF 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; Carolyn Ellsworth, Judge.

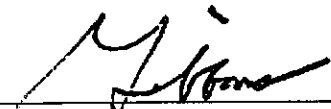
Appellant Terrence Terrell Hatcher argues the district court erred in denying the ineffective-assistance-of-counsel claims raised in his November 7, 2014, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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).

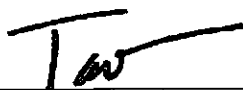
First, Hatcher argues his counsel was ineffective for assenting to a term in the plea agreement in which Hatcher stipulated to sentencing under the large habitual criminal enhancement if he were to be charged with a new crime. Hatcher fails to demonstrate his counsel's performance was deficient. At the evidentiary hearing, counsel testified Hatcher informed him that he would accept a plea offer if he was to be released on his own recognizance after entry of his plea. Counsel testified the State insisted upon the challenged stipulation in exchange for its approval of Hatcher's presentence release. Counsel testified he explained that portion of the plea agreement to Hatcher and Hatcher then accepted the plea agreement. Hatcher fails to demonstrate these were the actions of an objectively unreasonable defense attorney. Therefore, the district court did not err in denying this claim.

Second, Hatcher argues his counsel was ineffective for abandoning pursuit of a motion to suppress evidence. Hatcher asserts the motion had a likelihood of success and counsel should have used the motion to gain leverage in plea negotiations with the State. Hatcher fails to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel testified he explained to Hatcher that even if the suppression motion was successful, Hatcher was still likely to be convicted due to additional evidence not at issue in the motion. This evidence included surveillance video depicting Hatcher near the burglarized rooms and a victim's belongings discovered in Hatcher's possession during Hatcher's arrest. Counsel testified the defense then abandoned pursuit of the suppression motion due to Hatcher's acceptance of a plea offer. Counsel further testified the State's plea offer improved after he filed the suppression motion, he believed the motion played a role

in the improved offer, and Hatcher accepted the State's improved plea offer. Hatcher fails to demonstrate these were the actions of an objectively unreasonable defense attorney. Considering the additional evidence demonstrating his guilt Hatcher also fails to demonstrate a reasonable probability of a different outcome had counsel undertaken different actions regarding the suppression motion. Therefore, the district court did not err in denying this claim.

Having concluded Hatcher is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Carolyn Ellsworth, District Judge  
Christopher R. Arabia  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk