

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES RONALD BARKER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70272

FILED

NOV 18 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
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; Stefany Miley, Judge.

Appellant James Ronald Barker, III, argues the district court erred in denying his claims of ineffective assistance of counsel raised in his February 4, 2015, petition and July 22, 2015, supplement. 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

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facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

Barker argues his counsel was ineffective for failing to interview him and maintain contact with him. Barker asserts counsel refused to hear his version of events and failed to ask him to obtain letters of support for mitigation at the sentencing hearing. Barker also asserts counsel could have learned of errors in the presentence investigation report (PSI) had counsel maintained contact with him. Barker fails to demonstrate his counsel's performance was deficient or resulting prejudice.

The district court conducted an evidentiary hearing and Barker's counsel testified. The district court concluded counsel credibly testified he discussed the case and evidence on multiple occasions with Barker, including listening to Barker's version of events. The court further concluded counsel discussed with Barker the potential sentences and requested Barker's wife to obtain letters of support for the sentencing hearing. In addition, the court concluded counsel credibly testified he and Barker had discussed the PSI several days before the sentencing hearing and Barker failed to identify any errors contained in the PSI. The district court further found Barker's testimony regarding these issues to not be credible.

It is Barker's burden to provide this court with an adequate record to review the issues raised on appeal. See NRAP 30(b)(3); *McConnell v. State*, 125 Nev. 243, 256 n. 13, 212 P.3d 307, 316 n.13 (2009). Because Barker did not provide this court with a transcript of the evidentiary hearing we must presume the record supports the district court's findings of fact. See *Riggins v. State*, 107 Nev. 178, 182, 808 P.2d

535, 538 (1991) (concluding that if materials are not included in the record on appeal, the missing materials "are presumed to support the district court's decision"), *rev'd on other grounds by Riggins v. Nevada*, 504 U.S. 127 (1992). Given the district court's factual findings, we conclude the district court did not err as a matter of law in denying Barker's claims of ineffective assistance of counsel. Therefore, we conclude the district court did not err in denying the petition and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Law Office of Nadine Morton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk