

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID MAJIED,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69912

**FILED**

NOV 18 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In appellant David Majied's petition filed on November 20, 2014, he claimed he received ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate that 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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

First, Majied claimed counsel was ineffective for failing to object to the district court's decision to sentence him to an equal and consecutive term for the deadly weapon enhancement because the district court failed to delineate his reasons for imposing the consecutive sentence. Majied failed to demonstrate counsel was deficient or resulting prejudice. The district court was required to impose a consecutive sentence for the deadly weapon enhancement, *see* NRS 193.165(2)(b), and Majied fails to demonstrate a reasonable probability of a different outcome at sentencing had counsel objected. Therefore, the district court did not err in denying this claim.

Second, Majied claimed counsel was ineffective for failing to file an appeal challenging the imposition of consecutive sentences. Majied failed to demonstrate counsel was deficient. Majied specifically waived his right to appeal in his guilty plea agreement. Therefore, the district court did not err in denying this claim.


Finally, Majied claimed counsel was ineffective for failing to argue the Nevada Revised Statutes were invalid because the use of a three judge panel to oversee the creation of the Nevada Revised Statutes was unconstitutional. Therefore, he claims his conviction was illegal. We conclude counsel was not deficient for failing to make a futile argument. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (stating counsel is not deficient for failing to make futile objections and motions).

The Statutes of Nevada contain the laws of the State and the Nevada Revised Statutes merely reproduce those laws as classified, codified, and annotated by the Legislative Counsel. *See generally* NRS 220.110; NRS 220.120. Accordingly, we conclude the district court did not err by denying Majied's petition, and we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas Smith, District Judge  
David Majied  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk