

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEIYMOND ANTHONY TYSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69811

FILED

JAN 19 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Deiymond Anthony Tyson appeals from an order of the district court denying his September 15, 2015, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

In his petition, Tyson claimed his defense attorneys provided ineffective assistance of counsel. 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 that, 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668,

¹This 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).

697 (1984). 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).

Tyson first claimed his counsel were ineffective for advising him to plead guilty when there was insufficient evidence to establish he was at the crime scene and without informing him that he had not been identified by witnesses as the perpetrator. Tyson also asserted counsel failed to investigate so as to discover he was not identified as the perpetrator of the crimes and only hearsay or improper character evidence supported the allegations against him. Tyson failed to demonstrate his attorneys' performances were deficient or resulting prejudice.

In the written plea agreement, Tyson acknowledged he had discussed "any possible defenses, defense strategies, and circumstances which might be in my favor" with his counsel. Further, the record establishes the crimes were recorded on a convenience store's surveillance camera, one of the perpetrators wore a hat, and the hat was discovered outside of the store after the completion of the crimes. DNA evidence discovered on the hat matched Tyson's DNA. Under these circumstances, Tyson failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel provided different advice or performed further investigation in this matter. Therefore, we conclude the district court did not err in denying this claim.


Second, Tyson claimed his counsel coerced his guilty plea by failing to inform him of the relevant facts of this case. Tyson failed to demonstrate his attorneys' performances were deficient or resulting


prejudice. In the written plea agreement, Tyson acknowledged he did not act “under duress or coercion.” Further, and as stated previously, Tyson acknowledged in the written plea agreement he had discussed “any possible defenses, defense strategies, and circumstances which might be in my favor” with his counsel. Accordingly, Tyson failed to demonstrate his counsel acted in an objectively unreasonable manner in this regard. Given the circumstances and the evidence in the record supporting Tyson’s guilt, he failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel further discussed the relevant facts of this case with him. Therefore, we conclude the district court did not err in denying this claim.

Third, Tyson claimed his counsel were ineffective for failing to pursue a direct appeal despite Tyson’s request for such an appeal. Tyson failed to demonstrate his attorneys’ performances were deficient. “[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.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). Here, the district court conducted an evidentiary hearing and Tyson’s counsel testified. The district court concluded counsel credibly testified Tyson did not request to pursue a direct appeal or otherwise express a desire to pursue a direct appeal. See *id.* at 979 267 P.3d at 801 (explaining the defendant has the burden to indicate his desire to pursue a direct appeal). Our review of the record reveals the district court’s factual findings are supported by substantial evidence. Therefore, we conclude the district court did not err in denying this claim.

Fourth, Tyson claimed counsel improperly advised Tyson to waive his right to a preliminary hearing. Tyson failed to demonstrate his attorneys' performances were deficient or resulting prejudice. Tyson waived the preliminary hearing as a result of the plea negotiations. Tyson did not identify what actions counsel should have performed differently regarding the preliminary hearing proceedings or demonstrate that pursuing a preliminary hearing would have altered the outcome of the proceedings, particularly in light of the DNA evidence linking him to the crimes. Bare claims, such as this one, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err in denying this claim.

Having concluded Tyson is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.²


_____, J.
Tao


_____, J.
Gibbons

²The Honorable Abbi Silver, Chief Judge, did not participate in the decision in this matter.

cc: Hon. Richard Scotti, District Judge
Deiymond Anthony Tyson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk