

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICARDO PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69917

FILED

MAR 23 2017

ORDER OF AFFIRMANCE

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

Appellant Ricardo Perez appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on September 29, 2015.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Perez claims the district court erred by denying his claim that defense counsel was ineffective for failing to file a motion to suppress his confession because he was in custody and entitled to an attorney when he gave his confession.

To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice sufficient to invalidate a judgment of

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).


conviction based on a guilty plea, the petitioner must show, but for trial counsel's errors, he would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d. 1102, 1107 (1996). We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

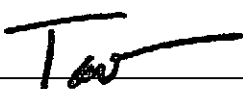
The district court applied the totality-of-the-circumstances test for determining the voluntariness of a statement, it considered the factors set forth in *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987), and it found Perez had voluntarily confessed to his crime. It further made the following factual findings: Perez went to the Clark County Detention Center of his own free will. Perez told detectives he was responsible for someone's death and wanted to turn himself in. Perez understood he was not under arrest and he could leave at any time. Perez was not in custody when he went to the detention center and confessed to the murder. And a motion to suppress Perez' statement would have been futile.


The district court's factual findings are supported by substantial evidence and are not clearly wrong, and we conclude the district court did not err by denying this ineffective-assistance-of-counsel claim and Perez' postconviction habeas petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750(1); NRS 34.770(2); *Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006); *Silva v. State*, 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997); *Gonzales v.*

State, 131 Nev. ___, ___, 354 P.3d 654, 658 (Nev. App. 2015). Accordingly,
we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Ricardo Perez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk