

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CALVIN SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71640

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Calvin Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 1, 2015, and supplemental petitions filed on September 18, 2015, and June 1, 2016. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Smith contends the district court erred in denying one of his claims of ineffective assistance of counsel. We disagree.

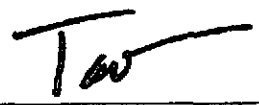
Smith argues trial counsel was ineffective for failing to file a motion to suppress Smith's statements to police. To demonstrate ineffective assistance, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that petitioner would not have pleaded guilty and would have insisted on going to trial absent counsel's error. *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), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). For purposes of the deficiency

prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions, *Strickland*, 466 U.S. at 690, and “counsel’s strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances,” *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted).

Counsel testified at the evidentiary hearing on the petitions he had discussed filing other pretrial motions with Smith, told Smith the district attorney would rescind any offers if motions were filed, and he would have filed a motion to suppress if the other pretrial motions were unsuccessful, but Smith did not want to do anything that would endanger the negotiations. Smith does not allege this was objectively unreasonable. Smith alleges that, but for counsel’s purported error, he would have rejected the plea offer and proceeded to a suppression hearing, but he does not allege that he would have insisted on going to trial. We therefore conclude the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
The Law Office of Mark Chaksupa, Esq.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk