

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN LORENZO STRADER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72890

FILED

APR 11 2018

REIZABE H. A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kevin Lorenzo Strader appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on September 30, 2015. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In his petition, Strader claimed he received ineffective assistance of counsel. To establish ineffective assistance of counsel, a petitioner who has been convicted pursuant to a guilty plea must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there is a reasonable probability, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings—including credibility determinations—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); *Little v. Warden*, 117 Nev. 845, 854, 34 P.3d 540, 546 (2001).

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Strader claimed defense counsel was ineffective for failing to challenge the district court's improper rejection of a guilty plea agreement. The district court conducted an evidentiary hearing and made the following findings. District Judge Jesse Walsh announced during the plea canvass that she would not accept Strader's guilty plea. Defense counsel acted reasonably by asking to approach Judge Walsh to discuss her ruling, getting the matter recalled, and getting Judge Walsh to agree to reconsider the guilty plea agreement at a hearing the following week. Strader decided he wanted to reject the guilty plea agreement and proceed to trial. Consequently, Judge Walsh did not conduct a second plea canvass and there is no indication as to whether she would have accepted or rejected the guilty plea agreement. Defense counsel's performance was not deficient, and Strader was not prejudiced by defense counsel's performance.

We conclude the district court's findings are supported by substantial evidence and are not clearly wrong, Strader failed to demonstrate counsel's performance was deficient, and the district court did not err by denying Strader's postconviction habeas petition. *See Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Gibbons

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.

cc: Hon. Elissa F. Cadish, District Judge
Drummond Law Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk