

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL CRUZ RIVEROL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73283

FILED

MAR 14 2018

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

ORDER OF AFFIRMANCE

Joel Cruz Riverol appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on March 21, 2017.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Riverol appears to claim the district court erred in denying his postconviction habeas petition because he was deprived of effective assistance of counsel.² He seems to focus on the district court's resolution of his claims that trial counsel was ineffective for failing to adequately

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

²To the extent Riverol claims the district court erred in denying his postconviction habeas petition because there was insufficient evidence to support his conviction, we conclude the district court properly determined Riverol waived this claim by not raising it on direct appeal. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999).

investigate a surveillance video of the incident and for presenting a defense of self-defense.

To establish ineffective assistance of trial counsel, a petitioner 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 outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Id.* at 697. 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).


The district court considered the briefs, transcripts, and documents on file and made the following findings. The State plainly proved Riverol struck the victim with a pole. Trial counsel's defense of self-defense provided the best chance for an acquittal because it explained that the victim was struck during a fight that was already in progress. Riverol's claim the surveillance video would show he did not strike the victim is belied by the record. And defense counsel's decision to pursue a defense of self-defense was a tactical decision.

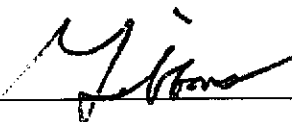
We conclude the district court's factual findings are supported by substantial evidence and are not clearly wrong and the district court did not err by rejecting these claims without appointing counsel or conducting an evidentiary hearing. *See* NRS 34.750(1); NRS 34.770(2); *Renteria-Novoa v. State*, 133 Nev. ___, 391 P.3d 760 (2017); *Rhyne v. State*, 118 Nev. 1, 8, 38

P.3d 163, 167-68 (2002); *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Joel Cruz Riverol
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³We have reviewed all documents Riverol has filed in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Riverol has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.