

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE CRUZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68461

FILED

JUN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Jose Cruz claims the district court erred by rejecting his ineffective-assistance-of-counsel claim.

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). Both prongs of the ineffective-assistance inquiry must be shown. *Id.* at 697. 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).

In his supplemental petition filed on September 10, 2013, Cruz claimed defense counsel's performance was deficient because counsel failed to present any mitigation witnesses or mitigating evidence at his sentencing hearing. Cruz argued counsel should have presented expert testimony to show that juveniles lack maturity and a sense of

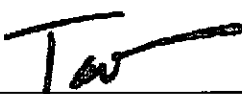
responsibility and his family members' testimony to show he had redeeming qualities and his actions were merely a product of his youth.

The district court conducted an evidentiary hearing and made the following factual findings: "[Counsel] testified that he began his sentencing investigation immediately upon his entry into the case and made considered, tactical decisions about how to approach the sentencing hearing." Counsel reviewed the psychological evaluations that were available due to Cruz's long involvement with the juvenile justice system, and he determined they had the potential to be more damning than mitigating. Counsel made a tactical decision not to call family members at sentencing because their testimony would be inconsistent with his mitigation argument that Cruz's juvenile delinquency was the result of a poor parental structure. Counsel testified credibly and Cruz failed to demonstrate counsel's sentencing decisions were objectively unreasonable.

The district court's factual findings are supported by the record and are not clearly wrong. We conclude the district court did not err in rejecting Cruz's ineffective-assistance-of-counsel claim. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (observing that "[t]actical decisions are virtually unchallengeable absent extraordinary circumstances"), and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Patrick Flanagan, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk