IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY LEROY WILLIAMS,
Appellant,
vs.
BRIAN E. WILLIAMS, SR.,
Respondent.

No. 68006

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; Janet J. Berry, Judge.

Appellant Timothy Williams claims the district court erred by denying his April 23, 2012, petition, amended petition, and supplemental petition because he received ineffective assistance of counsel. Williams argues counsel was ineffective because he failed to prepare for sentencing, provide mitigating evidence, and challenge the prior convictions used to support the habitual criminal adjudication. Williams also argues counsel was ineffective for failing to perfect a direct appeal.

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). "A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (internal quotation marks omitted). "To overcome that

presumption, a [petitioner] must show that counsel failed to act reasonably considering all the circumstances." *Cullen v. Pinholster*, 563 U.S. 170, ___, 131 S. Ct. 1388, 1403 (2011) (internal alteration and quotation marks omitted). When reviewing a district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong 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).

Here, the district court held an evidentiary hearing and made the following factual findings: Williams conceded he was only seeking relief on the grounds raised in his supplemental petition. The district court was appropriately advised of Williams' mitigating circumstances through Williams' statement to the court, defense counsel's sentencing arguments, and the presentence investigation report. Defense counsel inspected the certified prior convictions before Williams was adjudicated a habitual criminal, and Williams did not allege or prove these prior convictions were constitutionally infirm. Defense counsel testified Williams did not request an appeal and was relieved when he was not sentenced under the large habitual criminal statute, and Williams testified he received the sentence he was expecting. The district court concluded Williams failed to demonstrate defense counsel's performance was deficient.

The record demonstrates the district court's factual findings are supported by substantial evidence and are not clearly wrong. We conclude Williams failed to demonstrate defense counsel's representation fell below an objective standard of reasonableness and the district court did not err by denying his petition. *See Means v. State*, 120 Nev. 1001,

1012, 103 P.3d 25, 33 (2004); *see also Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 800 (2011) ("[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction."); *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming that counsel did not adequately prepare for trial must specify what the additional preparation would have revealed). Accordingly, we

ORDER the judgment of the district court AFFIRMED.[1]

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Janet J. Berry, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

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[1]To the extent the State claims the district court failed to specify a sentence for each of Williams' burglary convictions, we conclude this matter must be raised in the district court in the first instance. *See generally* NRS 176.033(1); NRS 176.035; *Powell v. State*, 113 Nev. 258, 264 n.9, 934 P.2d 224, 228 n.9 (1997).