

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN BRADLEY HODGES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70772

FILED

JUN 14 2017

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

ORDER OF AFFIRMANCE

Steven Bradley Hodges appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on October 31, 2013. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Hodges claims the district court erred by denying his postconviction habeas petition because he was deprived of effective assistance of counsel. He argues defense counsel was ineffective for failing to investigate and seek the suppression of evidence obtained through the warrantless use of a Global Positioning System (GPS) device. And he asserts the district court erred in its application of *Osburn v. State*, 118 Nev. 323, 44 P.3d 523 (2002), to this ineffective-assistance-of-counsel claim.

To state a claim of ineffective assistance of counsel sufficient to invalidate a guilty plea, the petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulted in prejudice such 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. *Hill v. Lockhart*, 474 U.S.

52, 58-59 (1985); *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *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*, 466 U.S. 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).


The district court conducted an evidentiary hearing and made the following factual findings: Detectives assigned to the Repeat Offender Program conducted surveillance on Hodges and placed a GPS device on his vehicle prior to his arrest. Detective Reed Thomas was unsure of when the device was placed on the vehicle or where the vehicle was located at the time. However, Hodges testified his vehicle was either parked at a motel or a halfway house during the weeks prior to his arrest. Both of these locations would have allowed the detectives to place the GPS device on the vehicle without Hodges’ knowledge.

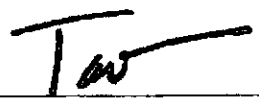
The district court further found defense counsel had no independent recollection of being notified about the GPS device and testified there would have been no reason to act on this information because the warrantless placement of a GPS device on a vehicle was permissible during that timeframe. At the time of Hodges’ guilty plea, *United States v. McIver*, 186 F.3d 1119 (9th Cir. 1999), *overruled in part by United States v. Pineda-Moreno*, 688 F.3d 1087, 1091 (9th Cir. 2012), was good law and stated the placement of an electronic tracking device on the undercarriage of a vehicle was not a search or seizure, and *United States v. Jones*, 565 U.S. ___, 132 S. Ct. 945 (2012), holding the placement

of a GPS device on a vehicle constitutes a search within the meaning of the Fourth Amendment, had not been decided.

Our review of the record reveals the district court's factual findings are supported by substantial evidence and are not clearly wrong, and Hodges has not demonstrated the district court erred as a matter of law. We conclude the district court did not misapply *Osburn* to Hodges' ineffective-assistance-of-counsel claim, *see Osburn*, 118 Nev. at 327, 44 P.3d at 526 (concluding the appellant did not have a reasonable expectation of privacy in the exterior of a vehicle he had parked in plain view of the street), and Hodges failed to demonstrate counsel was ineffective, *see Nika v. State*, 124 Nev. 1272, 1289, 198 P.3d 839, 851 (2008) (“[C]ounsel’s failure to anticipate a change in the law does not constitute ineffective assistance of counsel.”); *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (holding a petitioner must prove the facts underlying his claims of ineffective-assistance by a preponderance of the evidence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elliott A. Sattler, District Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk