

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GABRIEL WAYNE YATES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70639

**FILED**

APR 19 2017

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

*ORDER OF AFFIRMANCE*

Appellant Gabriel Yates appeals from an order of the district court denying his March 5, 2015, postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

In his petition, Yates claimed his trial counsel was ineffective. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such 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, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

First, Yates claimed counsel were ineffective for failing to correct errors in his presentence investigation report (PSI). Yates claims the PSI erroneously states he has never been married and has no contact with his children, his social security number is incorrect, his BMW is listed as an M6 but it is an M3, it contains facts in the offense synopsis that are not in his discovery documents, and the offense synopsis is incorrect.

Yates failed to demonstrate counsel were deficient or resulting prejudice. Yates failed to demonstrate counsel should have objected to this information. Much of the information Yates complains about was supplied by him during his interview. Further, the offense synopsis states it relied on the police reports in the case and the information provided in the offense synopsis matches what was stated in the police reports. Finally, Yates failed to demonstrate a reasonable probability of a different outcome regarding sentencing, classification, placement in programs, or eligibility for parole had counsel objected to the alleged errors. See *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011) (finding errors in a PSI may effect a defendant's sentence, classification, placement in programs, or eligibility for parole). Therefore, the district court did not err by denying this claim.

Second, Yates claimed counsel were ineffective for failing to file a direct appeal from his judgment of conviction. The district court held

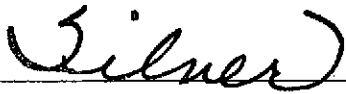
an evidentiary hearing on this claim. Both of Yates' attorneys testified they did not remember Yates asking them to file an appeal but had he asked, they would have filed an appeal on his behalf. Further, one of Yates' attorneys specifically remembered Yates stating he was pleading guilty and he did not want to appeal. Based on this testimony, the district court concluded Yates never requested counsel to file an appeal. Substantial evidence supports the decision of the district court, *see Toston v. State*, 127 Nev. 971, 978, 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.”), and we conclude the district court did not err by denying this claim.


Yates also claimed his plea was invalid because he was coerced into pleading guilty. Specifically, he claimed he was threatened by an inmate at the jail and that caused him to plead guilty. Yates provided affidavits from two fellow jail inmates asserting they had seen the threatening note.

A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

The district court concluded, based on the totality of the circumstances, Yates' claim he was coerced was belied by the record. The district court found Yates stated at the change of plea hearing he read and understood the plea agreement. In the plea agreement Yates acknowledged he was signing the plea agreement voluntarily and was not acting under duress or coercion. Further, the district court found Yates twice informed the district court at the change of plea hearing he had not been coerced into accepting the plea agreement. Substantial evidence supports the decision of the district court and we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

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<sup>2</sup>We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1).

cc: Hon. William D. Kephart, District Judge  
Gabriel Wayne Yates  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk