

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANE DAVAUGN FLY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69135

FILED

AUG 17 2016

GRACIE K. W. DEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.¹

Appellant Dane Fly claims the district court erred in denying his March 17, 2014, habeas petition because he received ineffective assistance of counsel at sentencing. In his petition, Fly claimed counsel was ineffective for failing to investigate his explanation for not appearing at sentencing, obtain documents supporting his explanation, and present the fullest information to the district court as to why moving his father from Nevada to Michigan was necessary, took longer than anticipated, and resulted in his failure to appear.

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

¹The Honorable Elizabeth Gonzales, District Judge, presided over Fly's bench warrant return and sentencing.

(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). 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 found defense counsel informed the sentencing court that Fly’s explanation for his failure to appear made sense based on the fact his father was ill and counsel’s familiarity with their father-son relationship; Fly had planned to return to Las Vegas after settling his father and had a return ticket in his pocket when he was found by the bounty hunter; and the bounty hunters confiscated Fly’s ticket, and counsel was unable to locate it. The district court noted the fact that counsel attempted to locate the ticket showed that counsel made an investigation into procuring information helpful to Fly’s sentencing and was relevant to counsel’s overall effectiveness.


The district court further found that none of the new exhibits provided by postconviction counsel would have changed the outcome of Fly’s sentence. And it was not reasonably probable Fly would have received a lesser sentence if defense counsel had presented this documentary evidence in support of Fly’s claim at sentencing because Fly breached the guilty plea agreement’s failure-to-appear clause, did not advise the court of his family emergency or seek a continuance, made no attempt to turn himself in after the bench warrant was issued, and has an

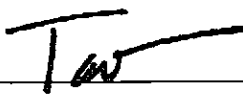
extensive criminal history that spans three states and includes six prior felony convictions.


The record demonstrates the district court's factual findings are supported by substantial evidence and are not clearly wrong, and we conclude Fly failed to demonstrate he was prejudiced by counsel's representation. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance of counsel).

Fly also claims the district court erred by denying his request for an evidentiary hearing. However, even if Fly's factual allegations demonstrated defense counsel's performance was deficient they did not demonstrate he was entitled to relief. *See Nika v. State*, 124 Nev. 1272, 1300-01, 198 P.3d 839, 858 (2008). Accordingly, the district court did not err in this regard.

Having concluded Fly is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jennifer P. Togliatti, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk