

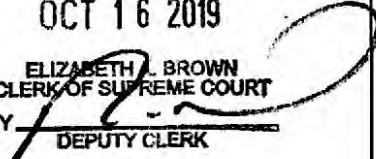
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO ENRIQUE VIDAL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76643-COA

FILED

OCT 16 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Francisco Enrique Vidal appeals from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Vidal filed the instant postconviction petition for a writ of habeas corpus on December 15, 2016, and a supplement to the petition on January 16, 2017. The district court held an evidentiary hearing, found that Vidal was not deprived of a direct appeal, and denied his petition and supplement. This court reversed the district court order and remanded the matter for reconsideration in light of the correct standard of law. *Vidal v. State*, Docket No. 72621 (Order of Reversal and Remand, April 16, 2018).

The district court again denied Vidal's petition and supplement on remand. Vidal claims the district court erred because appellate counsel did not obtain his permission to withdraw the direct appeal and therefore the direct appeal was wrongfully withdrawn. A claim that counsel failed to perfect an appeal is a claim of ineffective assistance of counsel. *Lozada v. State*, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994), *overruled on other grounds by Rippo v. State*, 134 Nev. 411, 426 n.18, 423 P.3d 1084, 1100 n.18 (2018). When reviewing the district court's resolution of an ineffective-

assistance-of-counsel claim, we give deference to the 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).

At the hearing on remand, the district court found appellate counsel testified credibly at the evidentiary hearing when he testified he had conversations with Vidal about withdrawing the appeal and he received permission to withdraw the appeal because it was without merit. Consequently, the district court determined Vidal was not deprived of his right to a direct appeal. We will not second-guess a district court's credibility determinations. *State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006). The district court's factual findings are supported by substantial evidence and are not clearly wrong, and we conclude Vidal has not demonstrated the district court erred as a matter of law. *See Jones v. Barnes*, 463 U.S. 745, 751 (1983) ("[T]he accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Melanie Hill Law PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk