


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES CLARK WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78115-COA

FILED

MAR 30 2020

ELIZABETH A. CROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

James Clark Williams appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 16, 2017.¹ Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

In his petition, Williams claimed that counsel was ineffective for failing to challenge the constitutionality of CCC 6.04.130.² Williams claimed had counsel challenged this county code, he would not have pleaded nolo contendere. Specifically, Williams claimed this county code was unconstitutional because the code violated the dormant commerce clause; the Sherman, Clayton, Hobbs, and RICO acts; his inalienable rights under the Ninth Amendment; his economic liberty under the Fourteenth Amendment; and his right to travel.

¹Williams stated in his notice of appeal that he was not challenging the district court's denial of his motion to withdraw plea. Therefore, this order does not address the portion of the district court's order denying the motion to withdraw plea.

²CCC 6.04.130 prohibits the conducting of business in the public right of way in unincorporated Clark County.

To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a nolo contendere plea, a petitioner must demonstrate his 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, petitioner would not have pleaded nolo contendere and would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). 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).

The district court found Williams failed to demonstrate counsel was ineffective because he failed to demonstrate such a challenge would have been successful. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (counsel is not deficient for failing to file futile motions). Specifically, the district court found that Williams was not arrested, charged, or convicted of violating CCC 6.04.130. Therefore, any challenge to that statute would not have provided Williams relief. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Williams also claimed his arrest was unlawful. "By entering his *nolo* plea[], however, [Williams] waived all constitutional claims based on events occurring prior to entry of the plea[], except those involving the voluntariness of the plea[] [itself]." *Warden v. Lyons*, 100 Nev. 430, 432,

683 P.2d 504, 505 (1984). Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, District Judge
James Clark Williams
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk