

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH BARRERA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78812-COA

FILED

JUN 30 2020

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

ORDER OF AFFIRMANCE

Joseph Barrera appeals from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In his petition filed on September 18, 2013, and his supplemental petition filed on August 12, 2015, Barrera claimed that his guilty plea was not knowingly, voluntarily, and intelligently entered and defense counsel was ineffective for failing to adequately investigate mitigation evidence. The district court entered findings of fact and conclusions of law and ordered the petition denied. On appeal, this court reversed the district court's denial of Barrera's ineffective-assistance-of-counsel claim and remanded the matter to the district court for an evidentiary hearing. *See Barrera v. State*, Docket No. 69634-COA (Order Affirming in Part, Reversing in Part and Remanding, April 19, 2017). Thereafter, the district court conducted an evidentiary hearing and entered an order summarily denying Barrera's ineffective-assistance-of-counsel claim.

On appeal, Barrera claims the district court erred by denying his ineffective-assistance-of-counsel claim. To state a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was

deficient in that it fell below an objective standard of reasonableness and (2) a reasonable probability, but for counsel's errors, the results of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Id.* at 697. We give deference to the district court's factual findings if they are supported by substantial evidence and are not clearly wrong, but we 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 conducted an evidentiary hearing on Barrera's ineffective-assistance-of-counsel claim. It heard testimony from Barrera's former defense counsel. And it found that Barrera had failed to demonstrate deficiency and prejudice. The record on appeal supports the district court's factual finding, and we conclude Barrera failed to meet his burden to demonstrate that counsel was ineffective. *See Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance by a preponderance of the evidence). Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Bulla

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.

cc: Hon. Michelle Leavitt, District Judge
Law Office of Julian Gregory, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk