

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL HARVEY RIGGS,
Appellant,
vs.
QUENTIN BYRNE, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

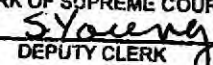
No. 78740-COA

DANIEL HARVEY RIGGS,
Appellant,
vs.
QUENTIN BYRNE, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 78741-COA

FILED

OCT 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Daniel Harvey Riggs appeals from a single district court order filed in district court case numbers CR13-1067 (Docket No. 78740-COA) and CR13-1364 (Docket No. 78741-COA) that denies two postconviction petitions for a writ of habeas corpus filed on March 8, 2016, and two supplemental petitions filed on March 16, 2018. The cases were consolidated on appeal. See NRAP 3(b). Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Riggs claims the district court erred by denying his petitions because defense counsel was ineffective. To state a claim of ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate (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, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 987-88, 923 P.2d 1102, 1107 (1996).

The petitioner must show both components of the ineffective-assistance inquiry—deficiency and prejudice, *Strickland v. Washington*, 466 U.S. 668, 697 (1984), and the petitioner must demonstrate the underlying facts of his claim by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Riggs claimed in his petition that defense counsel was ineffective for failing to inform him that victim Megan had a brain injury that may have compromised her ability to testify about the charges. The district court held an evidentiary hearing and made the following findings. Defense counsel could not testify at the evidentiary hearing because he is deceased. Riggs did not testify truthfully when he said that counsel failed to inform him of Megan's possible injuries. He did not prove that counsel's performance was deficient or that he was prejudiced. And he did not demonstrate that Megan's trial testimony would have been unreliable to the extent that he would have insisted on going to trial. We conclude the district court's findings are supported by the record and are not clearly wrong, Riggs failed to meet his burden to demonstrate that counsel was ineffective, and the district court did not err by rejecting this claim.

Second, Riggs claimed in his petition that defense counsel was ineffective for failing to inform him that victim Kayla initially told the police he did not rape her. The district court made the following findings. Riggs' testimony that counsel did not tell him about Kayla's statement was incredible. Riggs acknowledged he met with counsel a dozen or so times, each meeting lasted an hour or longer, and they discussed the strengths and the weaknesses of the State's case at these meetings. Riggs' father testified that counsel and Riggs talked about Kayla's exculpatory statement. Riggs knew the exculpatory nature of Kayla's initial statement would have been offset at trial by her explanation of what subsequently occurred. Kayla stated there was some consensual sexual activity between her and Riggs at first, but then Riggs "brutally raped her anally and forced her to orally copulate him." It is unbelievable that Riggs did not know about this statement, that counsel did not tell Riggs about this statement, and that Riggs would have proceeded to trial if he had known about this statement. We conclude the district court's findings are supported by the record and are not clearly wrong, Riggs failed to meet his burden to demonstrate that counsel was ineffective, and the district court did not err by rejecting this claim.

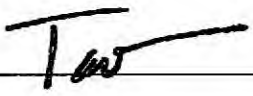
Third, Riggs claimed in his petition that defense counsel was ineffective for failing to inform him that a certain video could not be used against him at trial. The district court made the following findings. Counsel did not tell Riggs that the video would be admissible, the video allegedly depicted lawful activity, and the video would not have been relevant evidence at Riggs' trial. These findings are supported by the record and are not clearly wrong. We conclude that Riggs failed to demonstrate that counsel misadvised him about the admissibility of the video, Riggs has

not shown that he was prejudiced by counsel's performance in this regard, and the district court did not err by rejecting this claim.

Riggs also claims the district court erred by finding that his testimony was not credible. "[T]he district court is in the best position to adjudge the credibility of the witnesses and the evidence, and unless this court is left with the definite and firm conviction that a mistake has been committed, this court will not second-guess the trier of fact." *Rincon v. State*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (internal quotation marks omitted). We have reviewed the evidentiary hearing transcript, and we are not convinced that the district court made a mistake.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Edward T. Reed
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk