

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SIDNEY EARL CARTHEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78011-COA

**FILED**

**OCT 09 2020**

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

*ORDER OF AFFIRMANCE*

Sidney Earl Carthen appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Carthen argues the district court erred by denying his claim of ineffective assistance of counsel raised in his June 13, 2016, petition and later-filed supplement. To demonstrate ineffective assistance of trial-level counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (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).

Carthen claimed his counsel was ineffective for failing to investigate the collection of his DNA evidence and file a motion to suppress the DNA evidence. Carthen also asserted his counsel failed to properly advise him as to whether the DNA sample was improperly collected, and counsel's improper advice caused him to enter an unknowing and involuntary guilty plea.

At the evidentiary hearing conducted in this matter, Carthen's counsel testified he reviewed the information concerning the collection of the DNA evidence and concluded a motion to suppress that evidence would have been futile because Carthen voluntarily consented to the collection of his DNA sample. Counsel further testified that, based upon his investigation into the DNA evidence and the facts of the case, he decided to utilize the DNA evidence to argue before a jury that a guilty man would not have consented to collection of a DNA sample. The district court found counsel's testimony was credible and counsel's actions were reasonable under the circumstances in this case. Substantial evidence supports the district court's findings. *See Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) ("Tactical decisions are virtually unchallengeable absent extraordinary circumstances."). Therefore, Carthen failed to demonstrate that his counsel's performance fell below an objective standard of reasonableness.

Moreover, at the evidentiary hearing, a detective testified concerning his discussion with Carthen prior to collection of the DNA sample. The detective testified he told Carthen that he was investigating a crime and Carthen agreed to allow collection of his DNA sample. In addition, the officer testified Carthen signed a form indicating his consent to collection of his DNA sample. Carthen also testified he agreed to allow

the collection of his DNA sample and signed the consent form. The district court found the totality of the circumstances demonstrated that Carthen voluntarily consented to collection of his DNA sample. Substantial evidence supports the district court's finding. *See Canada v. State*, 104 Nev. 288, 290-91, 756 P.2d 552, 553 (1988) ("Voluntariness is a question of fact to be determined from the totality of the circumstances."). Carthen failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel filed a motion to suppress the DNA evidence or provided different advice to Carthen regarding that evidence. In addition, Carthen did not demonstrate counsel's advice and actions with respect to the DNA evidence caused him to enter an unknowing and involuntary guilty plea. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000). 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. Elliott A. Sattler, District Judge  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk