

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARQUE GARDELEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80981-COA

FILED

MAR 12 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Marque Gardeley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on October 30, 2014, and a supplemental petition filed on September 8, 2015. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Gardeley contends the district court erred by denying a claim of ineffective assistance of trial-level counsel. To demonstrate ineffective assistance of 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district 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).

Gardeley argued counsel was ineffective for failing to recognize the irreparable harm done to the attorney-client relationship by the State's pretrial motion to remove one of Gardeley's two defense attorneys. To avoid "the distorting effects of hindsight," courts "evaluate the conduct from counsel's perspective at the time" of the alleged deficiency. *Strickland*, 466 U.S. at 689.

During the hearing before the trial-level court regarding the State's motion, Gardeley informed the court that he wanted counsel to continue to represent him. Gardeley has not identified any additional information that would have reasonably indicated to counsel that their relationship had suffered irreparable harm. Moreover, at the evidentiary hearing on Gardeley's petition, both defense attorneys testified that the State's motion did not cause irreparable harm to their relationship with Gardeley and their interactions with him following the motion were productive. The district court found there was no irreparable harm to Gardeley's relationship with defense counsel, and this finding is supported by substantial evidence in the record. Gardeley therefore failed to demonstrate counsel was deficient or that he was prejudiced, and we conclude the district court did not err by denying Gardeley's petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge  
Ornoz & Ericsson, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk