

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM GAYLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81141-COA

FILED

MAR 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

William Gayler appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Gayler argues the district court erred by denying a claim of ineffective assistance of counsel raised in his September 12, 2017, postconviction petition for a writ of habeas corpus and later-filed supplement. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). "Generally, both components of the inquiry must be shown, but in some instances, such as when the petitioner has been deprived of the right to appeal due to counsel's deficient performance, the second

component (prejudice) may be presumed.” *Toston v. State*, 127 Nev. 971, 976, 267 P.3d 795, 799 (2011) (internal citation omitted).


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). This court will not “evaluate the credibility of witnesses because that is the responsibility of the trier of fact.” *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

In his petition, Gayler claimed his counsel was ineffective for failing to pursue a direct appeal. “[C]ounsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston*, 127 Nev. at 978, 267 P.3d at 800. At the evidentiary hearing on Gayler’s petition, counsel testified that he discussed whether to pursue a direct appeal with Gayler. Counsel testified that he advised Gayler that a direct appeal was not in his best interests as it risked undoing a favorable sentence structure. Counsel testified that Gayler ultimately accepted his advice and decided not to pursue a direct appeal. The district court found counsel’s testimony was credible and also found the information Gayler presented in support of his claim was not credible. The district court found that counsel’s testimony established Gayler did not want to pursue a direct appeal and concluded that counsel did not have a duty to pursue a direct appeal. The record

supports the district court's decision, and 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. David M. Jones, District Judge
David Schieck Law Office
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Eighth District Court Clerk