

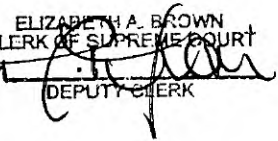
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN DEANDRE PROCTOR, A/K/A
STEVEN R. PROCTOR,
Appellant,
vs.
CALVIN JOHNSON; AND THE STATE
OF NEVADA,
Respondents.

No. 86060-COA

FILED

SEP 21 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Steven Deandre Proctor appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on December 16, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In his petition, Proctor alleged counsel was ineffective. 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, *Strickland*, 466 U.S. at 697, 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, *Lozada v. State*, 110 Nev. 349, 357, 871 P.2d 944, 949 (1994). 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).

Proctor claimed that counsel was ineffective for failing to file an appeal after the probation revocation proceedings and after being requested to do so. Counsel has a duty to file a notice of appeal when requested to do so even when the conviction arises from a guilty plea. *See Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011).

The district court conducted an evidentiary hearing on Proctor's claim, and Proctor and his counsel testified. Thereafter, the district court found that Proctor did not ask counsel to file an appeal. The record supports the district court's finding. Counsel testified that Proctor did not ask him to file an appeal and that he did not recall having a conversation about an appeal. Although Proctor implied that his grandmother had asked about filing an appeal on Proctor's behalf in an email she sent to counsel, counsel did not recall Proctor's grandmother inquiring about an appeal in the email, and the email was not admitted into evidence. In light of these circumstances, Proctor failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome but for counsel's

alleged error. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Mary Kay Holthus, District Judge
Steven Deandre Proctor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk