

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN KENNETH LAFEVER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52913

**FILED**

**MAR 11 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Stephen Kenneth LaFever's timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

LaFever contends that the district court abused its discretion by denying his claims that defense counsel was ineffective for (1) ignoring his alibi defense, (2) advising him to plead guilty to avoid facing three life sentences, (3) failing to move to suppress the overly suggestive out-of-court identification, (4) failing to move to suppress the testimony of two collateral witnesses, (5) failing to present additional mitigating evidence at sentencing, and (6) failing to file an appeal.

When reviewing the district court's resolution of ineffective-assistance claims, 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). Here, the district court conducted an evidentiary hearing on some of the claims and found that

defense counsel (1) spoke with the alleged alibi witnesses and determined that they would not support the alibi, (2) correctly explained the potential sentencing consequences arising from a trial and those arising from a guilty plea, (3) would not have changed his recommendation to take the plea bargain even if a motion to suppress the out-of-court identification was successful, and (4) investigated and determined that there would be no reason to exclude the testimony of the collateral witnesses who saw LaFever lurking in the bushes. The district court dismissed the mitigating evidence claim (claim 5) because it did not describe the additional mitigating evidence in any detail. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). The district court further found that LaFever did not ask defense counsel to file an appeal as stated in claim 6, determined that LaFever had failed to demonstrate that counsel was ineffective, and denied the petition. See Strickland v. Washington, 466 U.S. 668, 687 (1987) (establishing a two-part test for evaluating ineffective assistance of counsel claims); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (applying Strickland to judgments of conviction based on guilty pleas).

Our review of the record reveals that the district court's findings "are supported by substantial evidence and are not clearly wrong," and the district court did not err as a matter of law. See Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) (the tactical decisions of counsel are "virtually unchallengeable absent extraordinary circumstances"), abrogated on other grounds by Harte v. State, 116 Nev. 1054, 1072 n.6, 13 P.3d 420, 432 n.6 (2000). Accordingly, we conclude that

LaFever has failed to demonstrate that the district court erred in denying his petition, and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Steven R. Kosach, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk