

IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE DEON HAWES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52986

FILED

MAR 11 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Lance Deon Hawes' timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Hawes contends that the district court abused its discretion by finding that trial counsel was not ineffective for failing to (1) interview potential defense witnesses; (2) object to the minor-victim's testimony on grounds that she was not competent to testify; (3) obtain an expert on epilepsy to discuss the victim's grand mal seizures and injuries; and (4) present mitigation witnesses at sentencing. Hawes also contends that appellate counsel was ineffective for failing to challenge (1) the sufficiency of the evidence supporting his battery causing substantial bodily harm conviction, and (2) the introduction of hearsay testimony. We disagree.

When reviewing the district court's resolution of an ineffective-assistance claim, 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 found that trial counsel was either not deficient or that Hawes failed to demonstrate prejudice. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984) (establishing two-part test for ineffective assistance of counsel). The district court also found that appellate counsel was not ineffective because Hawes' claims did not have a reasonable probability of success on appeal. See Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). The district court's findings are supported by substantial evidence and are not clearly wrong, and Hawes has not demonstrated that the district court erred as a matter of law. Therefore, we conclude that Hawes is not entitled to relief and we

ORDER the judgment of the district court AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Jerome Polaha, District Judge
Jeffrey S. Blanck
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk