

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDOLPH WILLIAM POTTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53463

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 Randolph William Potts' timely, first post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

Potts contends that the district court abused its discretion by denying his claims that defense counsel was ineffective for failing to (1) prepare the case for trial and communicate with him, (2) investigate and call witnesses on his behalf, (3) elicit his testimony that he did not have a gun, (4) impeach victim Christopher Walsh with his prior police statement, and (5) object to the State's argument that victim Robert Austin sustained substantial bodily harm. Potts further claims that if

appellate counsel had raised more issues, the outcome of the appeal would likely have been different.

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. State, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). The court conducted an evidentiary hearing and found that (1) Potts failed to show that he was prejudiced by counsel's trial preparation, (2) Potts failed to present any witnesses at the evidentiary hearing to prove how they would have testified, (3) Potts testified at trial that he did not have a gun, (4) Potts failed to demonstrate the significance of Walsh's prior police statement, and (5) the evidence showed that Austin suffered significant physical injury. The district court determined that trial and appellate counsel rendered effective assistance. See Strickland v. Washington, 446 U.S. 687-88 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 987-88 & 998, 923 P.2d 1102, 1107 & 1113 (1996); see also Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance). Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly

wrong. And Potts has not demonstrated that the district court erred as a matter of law. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹

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

¹Although we have elected to file the fast track statement submitted, we note that it does not comply with the requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2). None of the assertions Potts made in his fast track statement were supported with a citation to the relevant page in the appendix. Counsel for Potts is cautioned that failure to comply with the requirements for fast track statements in the future may result in the statement being returned, unfiled, to be correctly prepared, NRAP 32(c), and may also result in the imposition of sanctions by this court, NRAP 3C(n).