

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER ANGEL SALDANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54541

**FILED**

**JUN 09 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 Javier Angel Saldana's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Robert H. Perry, Judge.

Saldana contends that the district court abused its discretion by denying his claim that trial counsel was ineffective for failing to file a direct 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 three evidentiary hearings and found that much of the testimony at the last hearing was contrary to the testimony at the previous hearings and was rebutted by the testimony of Saldana's trial counsel. The district court determined that Saldana failed to meet his burden of proof and denied the petition. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (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); Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (a habeas petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence).

Our review of the record reveals that the district court's findings are supported by substantial evidence and are not clearly erroneous, and the district court did not err as a matter of law. Accordingly, we conclude that Saldana has failed to demonstrate that the district court erred by denying his petition, and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Robert H. Perry, District Judge  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk