

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD GOMEZ RODRIGUEZ,
Appellant,
vs.
E.K. MCDANIEL, WARDEN, ELY
STATE PRISON; AND THE STATE OF
NEVADA,
Respondents.

No. 65067

FILED

APR 14 2015

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 a post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant Edward Gomez Rodriguez initially contends that the district court erred by denying his claims that trial counsel was ineffective for failing to inform him of his right to an appeal, prepare for trial by investigating a potential alibi witness, and prepare for sentencing by procuring mitigation witnesses. We review the district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

The district court conducted an evidentiary hearing and received testimony from Rodriguez, his trial counsel, and his sister. The district court found that Rodriguez failed to demonstrate that trial counsel had a legal duty to inform him of the right to a direct appeal, that further trial preparation would have produced helpful information, or that further

sentencing preparation would have produced mitigation witnesses whose testimony would have led to a lesser sentence. And the district court concluded that Rodriguez failed to meet his burden to prove ineffective assistance of counsel.

Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly wrong, and Rodriguez has not demonstrated that the district court erred as a matter of law. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996); see also *Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 799-800 (2011) (discussing the limited circumstances in which trial counsel has a constitutional duty to inform a client who has pleaded guilty about a direct appeal); *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004) (petitioner must prove the facts underlying his claim of ineffective-assistance by a preponderance of the evidence). Accordingly, we conclude that Rodriguez has not demonstrated that he was deprived of effective assistance of counsel.

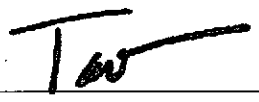
Second, Rodriguez contends that the district court erred by denying his petition without the benefit of the plea canvass transcript because a review of the transcript would have revealed that the court misinformed Rodriguez about his right to an appeal. However, Rodriguez's claim in the court below was that counsel was ineffective for failing to inform him of his right to an appeal—not that the court misinformed him of his right to an appeal. We conclude that the record considered by the court was sufficient to address the claims that Rodriguez did raise in his petition and that the district court did not err by denying the petition without considering the plea canvass transcript.

Finally, Rodriguez contends that the cumulative effect of the various trial errors alleged in his petition violated his rights to due process of law, equal protection of the laws, and a reliable sentence. However, this claim was not raised in the court below and we decline to consider it here. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991), *overruled on other grounds by Means*, 120 Nev. at 1012-13, 103 P.3d at 33.

Having concluded that the district court did not err by denying Rodriguez's petition, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Second Judicial District Court, Dept. 6
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk