

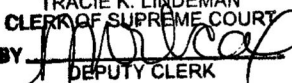
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOEL ELIAZAR ORTEGA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65466

**FILED**

JAN 21 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  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.

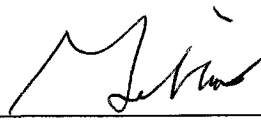
The district court convicted appellant of sexual assault pursuant to a guilty plea and sentenced him to a prison term of life with the possibility of parole. No direct appeal was filed from the judgment of conviction. Appellant filed a timely post-conviction petition for a writ of habeas corpus, the State filed a motion to dismiss the petition, and the district court granted the State's motion. On appeal from the dismissal, the Nevada Supreme Court concluded that an evidentiary hearing was necessary to determine whether appellant was deprived of an appeal and remanded the case for further proceedings. *Ortega v. State*, Docket No. 61156 (Order Affirming in Part, Reversing in Part, and Remanding, July 23, 2013). On remand, the district court conducted an evidentiary hearing and denied appellant's habeas petition. This appeal follows.


Appellant claims that the district court erred by denying his claim that trial counsel was ineffective for failing to perfect an appeal because appellant's behavior at sentencing was sufficient to place trial counsel on notice that he was dissatisfied with his conviction. 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).

Following the evidentiary hearing, the district court found that (1) appellant's testimony that he expressly told trial counsel that he wished to appeal was incredible, (2) trial counsel's testimony that the conversation never took place and that appellant never indicated a desire to further litigate the case was credible, and (3) appellant failed to overcome the presumption that trial counsel fully discharged his duties. The record supports the district court's factual findings and its rejection of appellant's appeal-deprivation claim. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004); see generally *Mulder v. State*, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) ("The trier of fact determines the weight and credibility to give conflicting testimony."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Brent T. Adams, District Judge  
Story Law Group  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk