

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAZARO MARTINEZ-HERNANDEZ,  
A/K/A LAZARO  
MARTINEZHERNANDEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72069

**FILED**

NOV 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Lazaro Martinez-Hernandez appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on February 1, 2011, and the supplemental petitions he filed on May 18, 2012, and February 24, 2015. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The State argues Martinez-Hernandez' petition should have been dismissed as procedurally barred because he did not file his petition within one year after the entry of the judgment of conviction.<sup>1</sup> See NRS 34.726(1). While it is true Martinez-Hernandez did not file his petition within one year of the judgment of conviction being entered on April 25, 2008, the district court previously found Martinez-Hernandez had good cause for the late filing because counsel failed to file a direct appeal on

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<sup>1</sup>The entry of an amended judgment of conviction on February 1, 2010, did not provide good cause because the claims raised in Martinez-Hernandez' petition and supplements did not relate to the amendments to the judgment of conviction. See *Sullivan v. State*, 120 Nev. 537, 540-42, 96 P.3d 761, 763-65 (2004).

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Martinez-Hernandez' behalf. Based on the finding by the district court, Martinez-Hernandez filed a direct appeal pursuant to NRAP 4(c). See *Martinez-Hernandez v. State*, Docket No. 63650 (Order of Affirmance, July 22, 2014). NRAP 4(c)(5) states the timeliness provisions governing any subsequent habeas corpus attack shall begin to run upon the termination of the direct appeal. Therefore, Martinez-Hernandez' petition was not procedurally barred as untimely, and the district court correctly reached the merits of the petition.

On appeal, Martinez-Hernandez claims the district court erred by denying his claims of ineffective assistance of counsel. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). We give deference to the district 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).

First, Martinez-Hernandez claimed counsel was ineffective for failing to adequately question jurors to seek out the biases based on their connections to law enforcement and by failing to challenge them for cause. Martinez-Hernandez failed to demonstrate counsel was deficient or

resulting prejudice. The district court found none of the challenged jurors made it on to the jury panel and Martinez-Hernandez failed to demonstrate with specificity any claim that would have warranted a challenge for cause regarding the jurors in question. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Second, Martinez-Hernandez claimed counsel was ineffective for failing to seek expert assistance to examine the videotape evidence which may have been altered. Martinez-Hernandez failed to demonstrate counsel was deficient or resulting prejudice. The district court found Martinez-Hernandez failed to support this claim with specific facts that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Specifically, the district court found Martinez-Hernandez failed to demonstrate the videotape had been altered. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Third, Martinez-Hernandez claimed counsel was ineffective for failing to request that two bench conferences be recorded. Martinez-Hernandez failed to demonstrate he was prejudiced. The first challenged instance involved an objection made by the State regarding questioning of a witness. After the bench conference, the district court allowed the questioning to continue. Therefore, Martinez-Hernandez cannot demonstrate he was prejudiced by counsel's failure to have the conference recorded. The second challenged instance involved a motion to dismiss based on insufficient evidence. Because Martinez-Hernandez was able to challenge the sufficiency of the evidence to support his conviction on direct appeal, he failed to show he was prejudiced by counsel's failure to have this

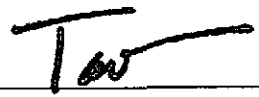
bench conference recorded. *See Martinez-Hernandez v. State*, Docket No. 63650 (Order of Affirmance, July 22, 2014). Therefore, the district court did not err by denying this claim.

Finally, Martinez-Hernandez claimed the cumulative errors of counsel entitled him to relief. Because Martinez-Hernandez' ineffective-assistance-of-counsel claims lacked merit, he failed to demonstrate cumulative error. Therefore, the district court did not err by denying this claim.

Having concluded Martinez-Hernandez is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michael Villani, District Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk