

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAQUAN BROWN, A/K/A DAQUAN  
BRYANT COOK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75045-COA

**FILED**

JAN 17 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Daquan Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Brown argues the district court erred by denying the claims of ineffective assistance of counsel raised in his August 18, 2017, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

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, Brown argued his counsel was ineffective for failing to communicate with him regarding an appeal and for failing to file a notice of appeal. “[T]rial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). The district court conducted an evidentiary hearing concerning this claim and two of Brown’s defense attorneys testified at that hearing. Both attorneys testified that Brown did not ask them to file a direct appeal and there were no circumstances in which Brown would have benefited from discussing a direct appeal. The district court found both attorneys’ testimony to be credible. The district court concluded the testimony established counsel did not have a duty to file a notice of appeal, Brown did not express the type of dissatisfaction which would warrant the filing of a notice of appeal, and Brown was not improperly deprived of a direct appeal. Substantial evidence supports that decision. *See id.* at 980, 267 P.3d at 801. Therefore, we conclude the district court did not err by denying this claim.


Second, Brown claimed his counsel was ineffective for failing to argue the legislature amended NRS 205.275 in 2011 to increase the value of stolen property necessary to commit a felony to at least \$650 and Brown should have benefited from the amended statute because the value of the stolen property in this matter was less than that amount. Brown failed to demonstrate his counsel’s performance was deficient or resulting prejudice. “[U]nless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of a crime.” *State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). When Brown

committed his crime, it was a felony to knowingly possess stolen property worth more than \$250. See 1999 Nev. Stat., ch. 105, § 18, at 402. The Legislature did not clearly express its intent to apply the new amount retroactively when it amended NRS 205.275, see Nev. Stat., ch. 41, § 21, at 166-67, and, therefore, the sentencing court properly applied the law in effect when Brown committed the crime. Accordingly, Brown failed to demonstrate objectively reasonable counsel would have raised this argument or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Next, Brown argued the sentencing court erred by failing to sentence him to a gross misdemeanor. This claim was not based on an allegation that Brown's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel and, therefore, was not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Accordingly, the district court did not err by denying relief for these claims.

Having concluded Brown is not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, A.C.J.  
Douglas

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

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

cc: Hon. Valerie Adair, District Judge  
Daquan Brown  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk