

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RUBEN RUVALCABA CARRILLO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 81755-COA

**FILED**

JUN 28 2021

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

*ORDER OF AFFIRMANCE*

Ruben Ruvalcaba Carrillo appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Carrillo argues the district court erred by denying the claims of ineffective assistance of counsel raised in his May 21, 2018, petition, and later-filed supplement. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness, and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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 687, 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, Carrillo argued his counsel was ineffective for failing to ask the State to stipulate to changes in the presentence investigation report (PSI) concerning the facts of the offense. Carrillo contended the PSI's recitation of the facts of the offense did not accurately reflect the victim's version of events and counsel should have attempted to ask the State to stipulate to correcting the PSI.


At the evidentiary hearing, counsel stated that the victim provided several statements concerning the incident and the statements varied somewhat. However, counsel stated that, in his experience, it was common for victims in cases involving domestic violence to alter their stories and he did not believe the variances in the statements in this matter were of a material nature. Counsel also stated he did not approach the State to seek its support for an alteration of the PSI because he was not sure the PSI needed correction as it reflected the contents of a police report concerning this matter. The district court reviewed the information that was presented to it regarding the facts of the offense and found the PSI was factually accurate. The record supports the district court's decisions. In light of the record, Carrillo failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. In addition, at the evidentiary hearing Carrillo did not present evidence regarding whether the State would have stipulated to changes in the PSI concerning the facts of the offense. Thus, Carrillo did not demonstrate by a preponderance of the evidence that the State would have stipulated to alter the PSI had counsel so requested. Therefore, Carrillo failed to demonstrate a reasonable probability of a different outcome had counsel sought the State's support for altering the PSI. Therefore, we conclude the district court did not err by denying this claim.



Second, Carrillo argued his counsel was ineffective for advising him not to pursue a direct appeal. At the evidentiary hearing, counsel testified that he discussed a direct appeal with Carrillo and advised Carrillo that he did not believe a direct appeal would be successful because he did not see any meritorious issues. Counsel stated that he advised Carrillo to pursue a postconviction petition for a writ of habeas corpus because Carrillo would be able to raise issues that could not be raised on direct appeal. Counsel testified that Carrillo accepted his advice and decided not to pursue a direct appeal. In light of the circumstances in this case, Carrillo failed to demonstrate counsel's actions fell below an objective standard of reasonableness. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Connie J. Steinheimer, District Judge  
Oldenburg Law Office  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk