


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDWARD TURNER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82177-COA

FILED

AUG 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Edward Turner appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Turner argues the district court erred by denying a claim of ineffective assistance of counsel raised in his November 2, 2018, petition and later-filed supplement. 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

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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).

Turner contended he asked his counsel to pursue a direct appeal but, instead, his counsel improperly filed a motion for reconsideration of sentence. "[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 Turner testified at that hearing. Turner testified that he had hoped to receive a lenient sentence and discussed pursuing a direct appeal with counsel after imposition of his initial sentence of 10 to 25 years in prison. Turner stated that counsel advised him there was no reason to pursue a direct appeal but instead advised him to pursue a motion for reconsideration of sentence. Turner accepted counsel's advice and counsel filed the motion. Turner acknowledged that the sentencing court agreed to reconsider his sentence and it subsequently imposed terms totaling 8 to 20 years in prison. Turner testified that he did not ask counsel to pursue an appeal after he received the shorter sentence.

The testimony established counsel did not have a duty to file a notice of appeal, Turner did not express the type of dissatisfaction which would warrant the filing of a notice of appeal, and Turner was not improperly deprived of a direct appeal. *See id.* at 979, 267 P.3d at 801 (explaining that the defendant has the burden to indicate to his counsel that

he wishes to pursue a direct appeal). 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. Jerry A. Wiese, District Judge
Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk