

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82203-COA

FILED

SEP 13 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Raul Gonzales appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 22, 2019, and a supplemental petition filed on May 13, 2020. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Gonzales first argues the district court erred by denying his claims of ineffective assistance of trial-level and appellate counsel without conducting an evidentiary hearing. 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); see also *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*, 466 U.S. at 687. 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). To warrant an evidentiary hearing, a petitioner must raise claims

supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Gonzales claimed counsel were ineffective for failing to challenge the trial-level court's participation in unrecorded, off-the-record plea negotiations in violation of *Cripps v. State*, 122 Nev. 764, 137 P.3d 1187 (2006). *Cripps* prohibits "judicial involvement and discussion during the plea negotiation process prior to any agreement between the parties." *Id.* at 771 n.24, 137 P.3d at 1191 n.24. The district court found that the role of the trial-level court in the plea negotiations was limited to making sure the parties had memorialized their agreement.¹ This finding is supported by substantial evidence in the record and not clearly erroneous. Gonzales thus failed to demonstrate the trial-level court violated *Cripps*. Accordingly, Gonzales failed to demonstrate that counsels' failure to challenge the alleged *Cripps* violation fell below an objective standard of reasonableness or a reasonable probability of a different outcome but for counsels' alleged errors. Therefore, we conclude the district court did not err by denying these claims without conducting an evidentiary hearing.


Gonzales also argues the district court erred by denying his claim that the trial-level court violated *Cripps*. Because Gonzales could have raised this claim on direct appeal but did not, his claim was waived. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Therefore, we conclude the district court did not err by denying this

¹The judge presiding over postconviction proceedings is not the same judge who presided over trial-level proceedings.

claim without conducting an evidentiary hearing.² For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 19
Ornoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²The district court erred by denying this claim on the merits. See *State v. Eighth Judicial Dist. Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) (“Application of the statutory procedural default rules to postconviction habeas petitions is mandatory.”). Nevertheless, because the district court properly denied relief, we affirm. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).