

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEREK DEWAYNE BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86213-COA

FILED

APR 05 2024

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

ORDER OF AFFIRMANCE

Derek Dewayne Brown appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on March 2, 2015, and a supplemental petition filed on February 24, 2016. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Brown argues that the district court erred by denying his claims of ineffective assistance of counsel. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial.¹ *Hill v. Lockhart*, 474 U.S.

¹We note that Brown pleaded guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and that an *Alford* plea is equivalent to a guilty plea insofar as how the court treats a defendant, *State v. Lewis*, 124 Nev.

52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Generally, both components of the inquiry—deficiency and prejudice—must be shown, *Strickland*, 466 U.S. at 687, but in some instances, such as when the petitioner has been deprived of the right to appeal due to counsel’s deficient performance, the second component (prejudice) may be presumed, *Lozada v. State*, 110 Nev. 349, 357, 871 P.2d 944, 949 (1994), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 426 n.18, 423 P.3d 1084, 1100 n.18 (2018); *see also Garza v. Idaho*, 586 U.S. ___, ___, 139 S. Ct. 738, 747 (2019) (holding “the presumption of prejudice . . . applies regardless of whether the defendant has signed an appeal waiver”).

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, Brown claimed counsel was ineffective for failing to investigate several witnesses, specifically (1) J. Smith., the tenant of the apartment where the victim’s body was found; (2) M. Pruitt, Smith’s girlfriend; (3) A. Roberson, Brown’s roommate at the time of the murder; (4); K. McDonald and T. Huffine, Smith’s friends; (5) N. Crail, Smith’s downstairs neighbor; (6) A. Masters, Smith’s upstairs neighbor; (7) W. Wright, Smith’s friend; and (8) “Fala,” a friend of the victim’s. Brown

132, 133 n.1, 178 P.3d 146, 147 n.1 (2008), *overruled on other grounds by State v. Harris*, 131 Nev. 551, 556, 355 P.3d 791, 793-94 (2015).

contended that an investigation into these witnesses would have revealed evidence indicating Smith was the killer.

The district court held an evidentiary hearing at which counsel and Brown testified. The district court found that (1) counsel did not interview certain witnesses because he was hoping they would not show for trial, given their reticence to come to the preliminary hearing; (2) counsel was prepared to cross-examine the State's witnesses with their changing stories if they came to trial; and (3) Brown failed to demonstrate an investigation into these witnesses would have revealed useful information. The district court's findings are supported by the record.

The record shows that counsel testified as follows: (1) the State's witnesses were difficult to locate; (2) the State had to obtain material witness warrants to get most or all of them to testify at the preliminary hearing; (3) he had doubts that some of the witnesses would show up at trial and, if they showed up, whether they would be sober and what version of events they would tell; (4) the State's witnesses all discussed Brown's jealousy regarding his girlfriend and the victim, but the witnesses had some information that was favorable to Brown, and he intended to elicit that information on cross-examination if they showed up for trial; but (5) he did not want to help the State get these witnesses to testify against Brown. None of the witnesses were called at the evidentiary hearing, and Brown did not present any evidence as to what additional information counsel would have discovered from investigating these witnesses that was not already contained in their police statements.

Brown failed to demonstrate by a preponderance of the evidence that an investigation into these witnesses would have revealed useful information beyond that already known to counsel. In light of the foregoing,

Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated these witnesses. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (stating a petitioner alleging that an attorney should have conducted a better investigation must demonstrate what the results of a better investigation would have been and how it would have affected the outcome of the proceedings). Accordingly, we conclude the district court did not err by denying these claims.

Second, Brown claimed counsel was ineffective for failing to investigate a Crime Stoppers report that indicated Smith was the killer. Brown testified that he did not know about the report until after he was sentenced. The district court found counsel's testimony that he discussed the report with Brown prior to sentencing contradicted Brown's testimony. The district court's finding is supported by the record, and Brown failed to demonstrate what counsel could have done to investigate the statements contained in the Crime Stoppers report or what the results of such an investigation would have been. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated the Crime Stoppers report. *See id.* Accordingly, we conclude the district court did not err by denying this claim.

Third, Brown claimed counsel was ineffective for failing to investigate his alibi. Brown contended that he was with T. Dotton and B. Dunn at the time of the murder. Brown further contended that he stayed with M. Knickerbocker the week of the murder, which contradicts Smith's claim that Brown stayed at Smith's apartment the night before the victim

was killed. The district court found that it was unclear whether Brown had asked counsel to speak with Dotton and Dunn; Dotton and Dunn had indicated in police interviews that Brown was not with them; and Brown failed to demonstrate that Dotton and Dunn would have provided helpful testimony. The district court's findings are supported by the record.

The record shows that although Brown testified that he informed counsel of his alibi, counsel testified that he had no recollection of Brown stating he had an alibi and no recollection of Dotton or Dunn. Moreover, a police report contradicts Brown's statement to detectives that he was at Dotton and Dunn's house "damn near the whole day" or "from the morning 'till the evening." Specifically, the report indicates Dotton informed officers that Brown was at their residence "around 2:00 or 3:00 PM" the day of the murder and stayed there for about an hour. Brown did not present any evidence regarding the victim's time of death.

Moreover, Brown did not demonstrate that he was with Knickerbocker when the victim was killed or that Knickerbocker would have corroborated his claim that he was with Dotton and Dunn when the victim was killed. Knickerbocker's police statement indicates only that Brown stayed with Knickerbocker either the week prior to the murder or the week of the murder. Brown did not call any of these witnesses at the evidentiary hearing or present any other evidence as to what these witnesses would have stated had counsel questioned them regarding Brown's alibi. Therefore, Brown failed to demonstrate by a preponderance of the evidence that any of these witnesses would have provided helpful testimony, and Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated his alibi.

See Molina, 120 Nev. at 192, 87 P.3d at 538. Accordingly, we conclude the district court did not err by denying this claim.

Fourth, Brown claimed counsel was ineffective for failing to investigate the victim's time of death. The district court found that Brown did not indicate how counsel should have investigated the victim's time of death or demonstrate that the victim's estimated time of death was wrong. The district court's findings are supported by the record. In his petition, Brown alleged that the victim's time of death was relevant to his alibi and to show Smith was at the apartment when the victim was killed. However, Brown did not present any evidence indicating what an investigation into the victim's time of death would have revealed. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated the victim's time of death. *See id.* Accordingly, we conclude the district court did not err by denying this claim.

Fifth, Brown claimed counsel was ineffective for failing to investigate information regarding favors, deals, or other benefits received by State witnesses. The district court found that Brown failed to demonstrate what such an investigation would have revealed. The district court's finding is supported by the record as Brown did not present any evidence indicating that any witness received a benefit from the State. In his petition, Brown identified a portion of Wright's statement to the police that he claims was in a friendly tone and suggested the possibility of some future benefit. In particular, Brown alleged that when Wright stated he was unemployed, the detective stated he would let Wright know if he knew "anybody that needs something done" and "I owe you that." Brown failed to demonstrate that counsel's performance was deficient or a reasonable

probability that he would not have pleaded guilty and would have insisted on going to trial had counsel investigated whether witnesses received benefits from the State. *See id.* Accordingly, we conclude the district court did not err by denying this claim.

Sixth, Brown claimed counsel was ineffective for failing to file a notice of witnesses or a notice that Brown intended to present an alibi defense. Brown did not allege which witnesses counsel should have noticed or why counsel's failure to file these notices was objectively unreasonable. And for the reasons previously discussed, Brown failed to demonstrate by a preponderance of the evidence that he had an alibi defense. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel filed these notices. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating that, to overcome the presumption that counsel performed effectively, "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" but that "he must *specifically explain* how his attorney's performance was objectively unreasonable" (quotation marks omitted)). Accordingly, we conclude the district court did not err by denying this claim.²

Seventh, Brown claimed counsel was ineffective for failing to file a motion in limine to exclude jail calls. Brown contended that the jail calls were irrelevant or were inadmissible pursuant to NRS 48.035. The

²To the extent Brown intended to argue that counsel should have called any of the witnesses referred to above, for the reasons previously discussed, we conclude Brown failed to demonstrate that counsel's performance was deficient for failing to notice these witnesses.

district court found that counsel considered such a motion but determined there was no legal basis to file it. The district court's finding is supported by the record.

The record shows that counsel testified that although none of the State's witnesses had seen the murder, and although the witnesses did not seem credible, "the one consistent thing all the witnesses talked about was" that Brown was jealous of the victim because he believed his girlfriend, B. Winder, was having an affair with the victim. Counsel testified that the jail calls "clearly reflect[ed] [a] volatile, jealous, dysfunctional relationship between" Brown and Winder, the calls "were erratic, jealous, accusatory in nature," and they "cemented that all of [the witnesses] were telling the truth" with respect to Brown's alleged motive for the murder. Counsel further testified that he considered filing a motion to exclude the jail calls but could not think of a legal basis for excluding them.

In light of these facts, Brown failed to demonstrate such a motion would have been granted. The jail calls were relevant to Brown's motive for the murder; thus, Brown failed to demonstrate that this evidence was irrelevant. *See* NRS 48.015 (stating that evidence is relevant if it has any tendency to make a fact of consequence more or less probable); *see also Chadwick v. State*, 140 Nev., Adv. Op. 10, ___ P.3d ___, ___ (Ct. App. 2024) ("Motive has been described as the reason that nudges the will and prods the mind to indulge the criminal intent. A motive thus operates as an incentive for criminal behavior." (internal quotation marks and citation omitted)). Moreover, Brown failed to explain why the jail calls were inadmissible pursuant to NRS 48.035. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability that he would not have pleaded guilty and would have insisted

on going to trial had counsel filed a motion in limine.³ *See Doyle v. State*, 116 Nev. 148, 154, 995 P.2d 465, 469 (2000) (stating an ineffective-assistance-of-counsel claim based on counsel's failure to file a motion to suppress must demonstrate "that the claim was meritorious and that there was a reasonable likelihood that the exclusion of the evidence would have changed the result of a trial" (quotation marks omitted)). Accordingly, we conclude the district court did not err by denying this claim.

Eighth, Brown claimed counsel was ineffective for failing to file a motion to suppress his statements to the police. Brown contended that his statements were taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), and that the detectives kept questioning him even after he repeatedly told them he was through talking and did not want to answer any more questions. Even assuming a motion to suppress would have been granted with respect to some or all of Brown's statements, Brown did not allege how suppressing his statements would have resulted in a different outcome.⁴ Therefore, Brown failed to demonstrate a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial had counsel filed a motion to suppress. *See Doyle*, 116 Nev. at 154, 995 P.2d at 469. Accordingly, we conclude the district court did not err by denying this claim.

³On appeal, Brown argues that counsel could have moved to suppress the jail calls as bad character evidence or evidence of other bad acts under NRS 48.045(2). Brown did not raise this claim in his petition below, and we decline to consider this claim on appeal in the first instance. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

⁴Brown did not confess to the murder in his police statement.

Ninth, Brown claimed counsel was ineffective for failing to file an opposition to the State's motion in limine to admit prior testimony. The district court previously denied the instant postconviction habeas petition without conducting an evidentiary hearing. Brown appealed, and the Nevada Supreme Court reversed the district court's order and remanded for an evidentiary hearing on most of Brown's claims. *See Brown v. State*, No. 72156, 2019 WL 2158496 (Nev. May 15, 2019) (Order of Reversal and Remand). However, the supreme court determined that Brown was not entitled to an evidentiary hearing on this claim. *See id.* In so holding, the supreme court necessarily determined that Brown failed to allege specific factual allegations that are not belied by the record and, if true, would have entitled him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). This holding is the law of the case, *see Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), and we conclude the district court did not err by denying this claim.

Tenth, Brown claimed counsel was ineffective for failing to present at the sentencing hearing information regarding Brown's criminal history. Brown contended that his purported "involvement with weapons" influenced the State's sentencing recommendation and that it was unclear from the presentence investigation report (PSI) to what extent he was involved with weapons. Brown testified that had counsel reviewed the PSI with him, he would have had an opportunity to present the following information: (1) regarding his 1995 conviction for armed robbery, he was only 15 years old, he only acted as a lookout for others who robbed a bank, and he did not have a weapon; (2) regarding his 2001 conviction for evading a police officer, he did not really take the police on a high speed chase; he just did not stop right away, and he did not have a weapon; (3) regarding

his 2004 conviction for felon in possession of a firearm, he had the firearm for his protection, not to commit crimes; and (4) regarding his 2008 conviction for ex-felon in possession of a firearm, although he was initially arrested for murder, he was not charged with murder and the firearm he possessed was never connected to the murder.

The district court found that Brown did not produce the actual police reports or judgments of conviction from these prior offenses and, thus, it had to rely on Brown's "self-serving word as to the circumstances of these convictions." The district court also found that it was unclear whether counsel knew of Brown's explanations for his prior offenses. The district court further found that Brown's explanations were not particularly mitigating because they showed he had been breaking the law in various ways since a very young age, he took little responsibility for his past actions, and he could not be deterred from carrying firearms. The district court's findings are supported by the record.

The record show that although Brown testified that counsel did not review the PSI with him, counsel testified that he did review the PSI with Brown prior to sentencing. Counsel testified that while he could not recall whether he went over Brown's criminal history with Brown, his custom and habit would have been to do so. Moreover, even if Brown's explanations for his prior offenses are accepted as true, they indicate Brown illegally possessed a firearm on multiple occasions and helped others commit an armed robbery of a bank, which supports the sentencing court's concern that Brown had "repeated involvement with weapons." Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability of a different outcome had counsel presented

information regarding Brown's criminal history at the sentencing hearing. Accordingly, we conclude the district court did not err by denying this claim.

Eleventh, Brown claimed counsel was ineffective for failing to correct mistakes in the PSI. Brown contended that the PSI erroneously stated that he admitted to purchasing a .38 caliber handgun and that he had been seen in possession of the victim's vehicle after the murder. The challenged statements are supported by Brown's own statement to the police and by Detective M. Wildemann's preliminary hearing testimony. Although there is also conflicting evidence in the record, Brown did not present any evidence at the evidentiary hearing indicating the challenged statements were in fact inaccurate. As such, Brown failed to demonstrate by a preponderance of the evidence that the PSI contained mistakes. Moreover, Brown did not demonstrate that correcting the alleged mistakes would have affected the decision of the sentencing court. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability of a different outcome had counsel corrected mistakes in the PSI. Accordingly, we conclude Brown is not entitled to relief on this claim.⁵

⁵To the extent Brown claimed counsel was ineffective for failing to correct mistakes in the PSI regarding Brown's gang affiliation, Brown did not specify how the PSI was mistaken. Rather, Brown claimed only that he was "entitled to the police reports and criminal records P&P relied upon to prepare his PSI" so he could make appropriate corrections and objections. Although Brown subsequently testified that he was not an "active" gang member, the PSI does not indicate that Brown is an "active" gang member; it indicates only that he is a "confirmed member." Therefore, Brown failed to demonstrate that counsel was deficient or a reasonable probability of a different outcome had counsel corrected any mistakes in the PSI regarding Brown's gang affiliation. Accordingly, we conclude Brown is not entitled to relief on this claim.

Twelfth, Brown claimed counsel was ineffective for failing to get letters of support from family members and friends and for failing to have these individuals testify on his behalf at the sentencing hearing. The district court found that Brown's contentions as to what these individuals would have said were mere conjecture as he did not present these witnesses at the evidentiary hearing. The district court's finding is supported by the record. In his petition, Brown alleged what his mother, sister, and two friends generally would have testified to at the sentencing hearing.⁶ However, Brown did not testify to these allegations at the evidentiary hearing, nor did he provide any other evidence to support his allegations. Thus, Brown failed to demonstrate by a preponderance of the evidence what information his family and friends would have provided to the sentencing court. Therefore, Brown failed to demonstrate that counsel's performance was deficient or a reasonable probability of a different outcome had counsel presented this evidence at sentencing. Accordingly, we conclude the district court did not err by denying this claim.

Thirteenth, Brown claimed counsel was ineffective for failing to file a direct appeal. "[C]ounsel 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 burden is on the client to indicate to his attorney that he wishes to pursue an appeal." *Davis v. State*, 115 Nev. 17, 20, 974 P.2d 658, 660 (1999).

⁶Brown also alleged that his brother was willing to support him by testifying or writing a letter. However, Brown did not allege what his brother would have stated, and Brown did not provide any evidence at the evidentiary hearing as to what his brother would have stated.

Brown first alleged that counsel had a duty to file a direct appeal because he requested one. The district court found that (1) Brown's stories about when he requested an appeal were conflicting, (2) counsel testified that he was aware there were still issues that could be appealed after a guilty plea, and (3) counsel testified that Brown did not ask him to file an appeal. The district court's findings are supported by the record. Moreover, the district court found counsel's testimony to be credible, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Therefore, we conclude that Brown failed to demonstrate by a preponderance of the evidence that he requested that counsel pursue a direct appeal.

Brown also alleged that counsel had a duty to file a direct appeal because he expressed dissatisfaction with his sentence. The Nevada Supreme Court has recognized that appeal-deprivation claims under this theory have "the potential for mischief, as it is by no means unusual for a criminal defendant to express dissatisfaction after having been convicted and facing a prison term." *Toston*, 127 Nev. at 978, 267 P.3d at 800. Thus, in assessing such claims, "the goal is to discern those clients who truly desire to appeal their conviction from those defendants who are disappointed with their lot." *Toston*, 127 Nev. at 979, 267 P.3d at 800-01.

A court must consider the totality of the circumstances in determining whether a defendant has expressed dissatisfaction such that counsel could reasonably infer a desire to appeal the conviction or sentence. *Id.* at 979, 267 P.3d at 801. When the defendant has pleaded guilty, relevant circumstances may include whether the defendant (1) received the sentence he bargained for; (2) reserved certain issues for appeal; (3)

indicated a desire to challenge his sentence within the period for filing an appeal; and (4) sought relief from the plea before sentencing. *Id.* at 979-80, 267 P.3d at 801.

The district court found that (1) Brown did not reserve any issues for appeal in the plea agreement, (2) Brown did not tell counsel that he wanted to challenge his sentence within the period for filing an appeal, and (3) there was no indication in the record that Brown sought relief from the plea before sentencing.⁷ The district court found that Brown expressed displeasure with his sentence, but the court determined that Brown “did not truly wish to appeal his conviction as a whole, and instead was disappointed with the sentence that” the judge gave him. The district court’s findings are supported by the record.

The record shows that Brown did not reserve any issues for appeal in the plea agreement, counsel testified that Brown never expressed a desire to appeal the sentence, and that Brown did not seek relief from his plea prior to sentencing. Moreover, Brown was convicted of second-degree murder with the use of a deadly weapon and was sentenced to 18 years to life in prison. Counsel testified that although they were hoping the judge would not impose a life sentence, he informed Brown that the judge was not a lenient sentencer and that he could receive a life sentence. And when asked if Brown expressed dissatisfaction with his sentence, counsel testified, “I’m sure he did.”

⁷The district court also found that Brown’s sentence was within the range of punishment contemplated by the plea agreement. The district court’s finding is supported by the record. However, the parties did not recommend a specific sentence in the plea agreement; rather, both parties retained the right to argue for any lawful sentence. Therefore, we afford this factor minimal weight.

Although the record indicates that Brown was dissatisfied with his sentence, such dissatisfaction is to be expected when a defendant receives the maximum prison sentence. *See id.* at 979, 267 P.3d at 800. After review, we conclude that Brown failed to demonstrate his desire to appeal his sentence could be reasonably inferred from the totality of the circumstances. Therefore, Brown failed to demonstrate that counsel's performance was deficient for failing to file a direct appeal. Accordingly, we conclude the district court did not err by denying this claim.

On appeal, Brown argues that his plea was unknowingly and involuntarily entered due to the ineffective assistance of counsel and that counsel was ineffective for failing to ensure that the sentencing court made findings in support of the deadly weapon enhancement as required by NRS 193.165(1). Brown did not raise these arguments in his petition below,⁸ and we decline to consider them for the first time on appeal. *See McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

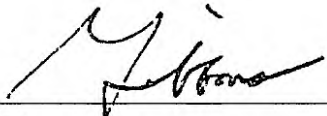
Brown also argues that the district court erred by denying his claim that cumulative error warrants reversing his conviction and sentence. Even if multiple instances of deficient performance may be cumulated for purposes of demonstrating prejudice, *see McConnell v. State*, 125 Nev. 243, 259 & n.17, 212 P.3d 307, 318 & n.17 (2009), Brown did not demonstrate a

⁸In his petition, Brown stated that the sentencing court did not making findings in support of the deadly weapon enhancement as required by NRS 193.165(1). However, Brown did not allege that counsel was ineffective for failing to ensure such findings were made. To the extent Brown raised the district court's failure to make such findings as an independent ground for relief, we note that this claim was outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus arising from a guilty plea. *See* NRS 34.810(1)(a); *Gonzales v. State*, 137 Nev. 398, 403, 492 P.3d 556, 562 (2021).

reasonable probability that he would not have pleaded guilty and would have insisted on going to trial but for counsel's errors. Accordingly, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk