

IN THE UTAH COURT OF APPEALS

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| Robert L. Baugh III, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Petitioner and Appellant, |) | |
| |) | Case No. 20090421-CA |
| v. |) | |
| |) | F I L E D |
| State of Utah, |) | (July 22, 2010) |
| |) | |
| Respondent and Appellee. |) | 2010 UT App 204 |

Third District, Salt Lake Department, 070917058
The Honorable Robert K. Hilder

Attorneys: Robert L. Baugh III, Draper, Appellant Pro Se
Mark L. Shurtleff and Erin Riley, Salt Lake City, for
Appellee

Before Judges Davis, McHugh, and Roth.

PER CURIAM:

Robert L. Baugh III appeals the district court's order dismissing his petition for post-conviction relief. More particularly, Baugh asserts that the district court erred in determining that his counsel provided effective assistance. We affirm.

In reviewing a district court's dismissal of a petition for post-conviction relief, we review the district court's conclusions of law for correctness; however, we will disturb a district court's findings of fact only if they are clearly erroneous. See Matthews v. Galetka, 958 P.2d 949, 950 (Utah Ct. App. 1998). Further, "we survey the record in the light most favorable to the findings and judgment; and we will not reverse if there is a reasonable basis therein to support the trial court's refusal to be convinced that the writ should be granted." Id. (citation omitted).

In order to prevail on a claim for ineffective assistance of counsel, a petitioner must demonstrate that his counsel's performance was deficient and that the petitioner was prejudiced by the deficient performance. See Strickland v. Washington, 466 U.S. 668, 693 (1984). Baugh asserts that his counsel did not

adequately investigate Baugh's claimed innocence and, as a result, provided poor advice during plea negotiations. However, the district court determined that counsel's performance was not deficient. Further the court determined that even had counsel "engaged in all of the activities that petitioner now proposes, there is no reasonable likelihood that the outcome would have been any different." The evidence supports the district court's findings, which in turn support the district court's conclusions of law.

The testimony at the evidentiary hearing demonstrated that counsel either personally interviewed or reviewed statements from all relevant witnesses. Counsel also investigated Baugh's potential alibi defense, including obtaining registration records from a motel which the victim believed may have been the location of the sexual abuse. After reviewing all of the applicable information, counsel outlined the potential options with Baugh. Despite counsel's assurance that she would be more than willing to take the case to trial, Baugh made the decision to accept the plea bargain offered by the State. Based upon the testimony presented at the evidentiary hearing, Baugh cannot demonstrate that any of the district court's findings were clearly erroneous. These findings, in turn, support the district court's conclusion that counsel did not provide deficient performance.¹

Affirmed.

James Z. Davis,
Presiding Judge

Carolyn B. McHugh,
Associate Presiding Judge

Stephen L. Roth, Judge

¹This court notes that the State filed a motion to strike two affidavits attached to Baugh's reply brief. We did not consider these affidavits because they were not presented to the district court and, thus, were not part of the record on appeal. See West Jordan City v. Goodman, 2006 UT 27, ¶ 31, 135 P.3d 874.