

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CYNTHIA ANN MADDOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72030

FILED

NOV 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Cynthia Ann Maddox appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 19, 2014, and supplemental petition filed on March 28, 2016. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Maddox contends the district court erred by denying several of her claims of ineffective assistance of trial counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show her 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, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *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 v. Washington*, 466 U.S. 668, 697 (1984).

The district court conducted an evidentiary hearing at which Maddox had the burden of demonstrating the underlying facts by a preponderance of the evidence. *See Means v. State*, 120 Nev. 1001, 1012,

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103 P.3d 25, 33 (2004). The district court found counsel to be credible and rejected Maddox's contrary testimony. We give deference to the 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).

Maddox first argued counsel should have advised her of the possible penalties she faced, should not have promised her a sentence of five years, and should have advised her the district court was not bound by the guilty plea agreement.¹ The district court's findings that counsel properly advised Maddox of the possible penalties and did not guarantee a particular sentence were supported by counsel's testimony. And Maddox's own testimony refuted her claims that she was promised a five-year sentence and was not advised the district court was not bound to follow the plea agreement: Maddox testified counsel told her the State was seeking concurrent five-year sentences but the district court could possibly run them consecutively. Moreover, counsel testified that, while Maddox was unhappy with the State's various plea offers, Maddox did not wish to proceed to trial. Accordingly, Maddox failed to demonstrate counsel was deficient or she was prejudiced, and we therefore conclude the district court did not err in denying these claims.

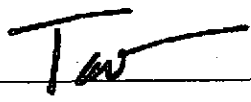
Maddox next argued counsel should have informed her of her right to appeal her conviction. The district court's finding that counsel properly advised Maddox of her right to appeal is supported by substantial

¹We note rather than setting forth a sentencing range, Maddox's guilty plea memorandum unequivocally stated she would be sentenced to terms of 2 to 20 years, and her guilty-plea canvass indicated the same. Maddox has never contended—and indeed her testimony belied—that she pleaded guilty in reliance on receiving sentences of 2 to 20 years.

evidence in the record. Counsel testified she discussed with Maddox her right to appeal her conviction both before and after sentencing and Maddox stated she did not wish to appeal. Maddox's testimony corroborated this in part where, although she testified they did not discuss an appeal, she also testified to particulars of their discussion regarding an appeal. Accordingly, Maddox failed to demonstrate counsel was deficient, and we therefore conclude the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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