

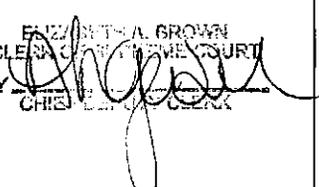
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PERRY FERNESE WESLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 75484-COA

FILED

MAY 15 2019

ENZO ANTHONY GROWN  
CLERK OF THE COURT  
BY   
CHRISTOPHER GROWN

ORDER OF AFFIRMANCE

Perry Fernese Wesley appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 10, 2017.<sup>1</sup> Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

In his petition, Wesley claimed his counsel was ineffective. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, 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). We give deference to the court's factual findings if supported by substantial evidence and not clearly

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<sup>1</sup>This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

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, Wesley claimed counsel was ineffective for failing to file a motion to suppress the search of his apartment. The district court denied this claim because it was outside the scope of a postconviction petition for a writ of habeas corpus challenging the judgment of conviction based upon a guilty plea because Wesley did not allege his "plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." See NRS 34.810(1)(a). Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Second, Wesley claimed counsel was ineffective for failing to investigate his use of PCP, beer, liquor, and marijuana prior to committing the crime and his mental health history. He claimed these issues could have been used to present a defense of mental incapacity or that they could have been used to combat the intent elements of first- and second-degree murder. He claimed, based on counsel's failure, his plea was involuntarily or unknowingly entered. Wesley failed to demonstrate counsel was deficient. Counsel testified at the evidentiary hearing that she investigated Wesley's drug use, alcohol consumption, and his mental health history and had discussions regarding these issues with Wesley prior to his pleading guilty. Specifically, she discussed potential defenses and the strengths and weaknesses of those defenses. Therefore, we conclude the district court did not err by denying this claim.<sup>2</sup>

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<sup>2</sup>The district court denied this claim finding it was outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. This was error because

Third, Wesley claimed counsel was ineffective for failing to seek a competency evaluation prior to entering his plea. He claimed he was being given medication in the prison and he was told to accept the plea absent a full investigation of his mental health. After holding an evidentiary hearing on this issue, the district court found Wesley failed to demonstrate counsel was deficient or resulting prejudice. Specifically, the district court found Wesley failed to demonstrate he lacked sufficient present ability to consult with counsel with a reasonable degree of rational understanding or lacked a rational and factual understanding of the proceedings against him. Substantial evidence supports the decision of the district court, *see Melchor-Gloria*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (setting forth the standard for competency), and we conclude the district court did not err by denying this claim.

Finally, Wesley claimed counsel was ineffective at sentencing for failing to object to the district court imposing the deadly weapon enhancement. Wesley claimed the deadly weapon was a necessary element of the crime and it violated double jeopardy. The district court found no deficiency or resulting prejudice. Specifically, the district court found any objection on these grounds would have been futile because the deadly weapon portion of his sentence was a mandatory enhancement and its imposition did not violate double jeopardy. Substantial evidence supports the decision of the district court, *see* NRS 193.165(1); *Ennis v. State*, 122

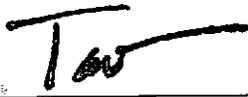
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Wesley specifically stated counsel's failure to investigate these issues affected the voluntary and knowing nature of his plea. *See* NRS 34.810(1)(b). However, because the district court correctly denied the claim, albeit for an incorrect reason, we nevertheless affirm the district court's denial of this claim. *Wyatt v. State*, 86 Nev. 292, 298, 468 P.2d 338, 341 (1970).

Nev. 694, 706, 137 P.3d 1095, 1103 (2006); *Nev. Dep't of Prisons v. Bowen*, 103 Nev. 477, 479, 745 P.2d 697, 698 (1987), and we conclude the district court did not err by denying this claim.

Having concluded Wesley was not entitled to relief, we  
ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. William D. Kephart, District Judge  
Perry Fernese Wesley  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk