

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON ARTHUR ALTHEIDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76709-COA ✓

JASON ARTHUR ALTHEIDE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76710-COA

FILED

JUL 17 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jason Arthur Altheide appeals from orders of the district court dismissing postconviction petitions for a writ of habeas corpus and motions to modify or correct an illegal sentence filed in district court case numbers CR8242 (Docket No. 76709) and CR8254 (Docket No. 76710). We elect to consolidate these appeals for dispositional purposes. *See* NRS 3(b)(2). Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Postconviction petitions for a writ of habeas corpus

Altheide argues the district court erred by denying the claims of ineffective assistance of counsel he raised in his April 27, 2017, petitions and later-filed supplements. 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 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, Altheide raised multiple claims concerning his trial counsel's actions regarding a potential insanity defense. Those claims included failing to retain an investigator to obtain information concerning Altheide's mental health, failing to have an independent mental health professional assess Altheide's mental state and testify concerning the elements of an insanity defense, failing to cause Altheide to talk to Dr. Paglini, failing to cause Altheide to undergo a neurological examination, requesting a speedy trial despite the complexities of an insanity defense, failing to consult with Altheide concerning an insanity defense, and failing to research and prepare for an insanity defense. Altheide failed to demonstrate his counsel's performance was deficient or resulting prejudice.

At the evidentiary hearing, counsel testified that Altheide initially wished to pursue an insanity defense and they discussed such a defense. Counsel concluded the best initial step was to seek a criminal responsibility examination at Lake's Crossing. Counsel testified Altheide had been violent with him and others while in custody, and for those reasons he felt Lake's Crossing was best equipped to deal with him at that time. Counsel testified he would have taken additional steps to obtain evidence

concerning Altheide's mental state depending on the results of the criminal responsibility examination.

However, Altheide changed his mind, decided he did not wish to pursue an insanity defense, and refused to participate in the criminal responsibility examination. Counsel testified that he discussed this decision with Altheide and, because the decision to pursue an insanity defense rested with Altheide, he ceased efforts to obtain evidence in support of an insanity defense. The district court found counsel to be credible and counsel's actions reasonable given the circumstances in this matter. Substantial evidence supports the district court's findings. *See Johnson v. State*, 117 Nev. 153, 163, 17 P.3d 1008, 1015 (2001) (recognizing that a mentally competent defendant has the absolute right to prohibit defense counsel from interposing an insanity defense over his express objection). Altheide failed to demonstrate a reasonable probability he would have refused to enter a no contest plea and would have insisted on proceeding to trial had counsel performed different actions concerning an insanity defense. Therefore, we conclude the district court did not err by denying this claim.

Second, Altheide argued counsel was ineffective for failing to review the plea agreement with him prior to the plea canvass. Altheide failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel testified he reviewed the plea agreement with Altheide in detail a few days before the plea canvass. Counsel also testified he reviewed the key provisions of the plea agreement with Altheide shortly before the plea canvass. Counsel testified that based on his discussions with Altheide, he was confident Altheide understood the plea agreement. The district court found counsel was credible and

substantial evidence supports that finding. Accordingly, Altheide failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a no contest plea and would have insisted on proceeding to trial had counsel performed different actions concerning explanation of the plea agreement. Therefore, we conclude the district court did not err by denying this claim.

Third, Altheide argued his counsel was ineffective for failing to withdraw from representing him due to an excessive caseload. Altheide failed to demonstrate his counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel acknowledged he had a large caseload but stated his caseload had no effect on the actions he took in the course of his representation of Altheide. The district court found counsel was credible and substantial evidence supports that finding. Accordingly, Altheide failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to enter a no contest plea and would have insisted on proceeding to trial had counsel sought to withdraw from this matter due to an excessive caseload. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Altheide argued his counsel was ineffective for failing to object during the plea canvass when the district court did not advise him of the consequences he potentially faced by violating the "trap door" clause in his plea agreement. Altheide failed to demonstrate resulting prejudice. At the evidentiary hearing, counsel testified he discussed the trap door clause at length with Altheide and explained the potential penalties he faced for violating that clause. Counsel testified he advised Altheide not to accept the plea agreement if Altheide could not abide by the clause. Counsel

stated he was confident Altheide understood the trap door clause. The district court found counsel to be credible and substantial evidence supports that finding. In addition, the clause and the potential penalties Altheide faced from the habitual criminal enhancement were contained in the written plea agreement, and counsel testified he reviewed the agreement in detail with Altheide. Given the record, Altheide failed to demonstrate he would have refused to enter a no contest plea and would have insisted on proceeding to trial had counsel requested the district court to explain to Altheide the trap door clause and the consequences of violating that clause. Therefore, we conclude the district court did not err by denying this claim.

Motions to modify or correct an illegal sentence

Altheide filed motions on April 6, 2017, October 18, 2017, and June 26, 2018, that the district court construed as motions to modify or correct an illegal sentence. In those motions, Altheide claimed he suffered from ineffective assistance of counsel and the State and district court did not advise him of the trap door clause or that he faced adjudication as a habitual criminal if he violated the clause. Altheide's claims fell outside the narrow scope of claims permissible in a motion to modify or correct an illegal sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any of these claims, we conclude the district court did not err by denying relief.

Next, Altheide claimed his California felony theft convictions should not have been treated as felonies for enhancement purposes because they did not meet the statutory requirement for felony theft had he committed those offenses in Nevada. Altheide failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See id.* He also did not demonstrate

his sentence was facially illegal or the district court lacked jurisdiction. *See id.* As acknowledged by Altheide, his California theft convictions were crimes “which under the laws of the situs of the crime” amounted to a felony, and therefore were properly considered for enhancement purposes pursuant to NRS 207.010(1)(b). Accordingly, we conclude the district court did not err by denying Altheide’s motions, and we

ORDER the judgments of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk