

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAYLOR PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79190-COA

FILED

FEB 12 2021

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

ORDER OF AFFIRMANCE

Taylor Patterson appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Patterson argues the district court erred by denying the claims of ineffective assistance of counsel raised in his September 11, 2015, petition and later-filed supplement. 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. *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*, 466 U.S. at 687, and 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, Patterson argued his counsel was ineffective for failing to investigate the facts of the case or whether Patterson's confession accurately reflected his actions. At the evidentiary hearing, counsel testified that he investigated the facts of the offense and reviewed Patterson's confession. Counsel stated that he talked with Patterson on numerous occasions and Patterson never stated that his confession was somehow inaccurate. Counsel also noted that the sexual assault examination revealed that the victim had injuries consistent with sexual assault. Counsel testified that he decided the State's case against Patterson was very strong based upon his review of the evidence. The district court concluded that counsel's testimony was credible and counsel's investigation was conducted in a reasonable manner. The record supports the district court's findings. Accordingly, Patterson failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel conducted additional investigation. Therefore, we conclude the district court did not err by denying this claim.

Second, Patterson argued his counsel was ineffective for failing to prepare for the sentencing hearing or present mitigation witnesses. At the evidentiary hearing, counsel testified he was prepared for the sentencing hearing but his argument was limited by the plea agreement in which both parties agreed to recommend a prison term of 8 to 20 years.

Counsel testified that he felt that the plea agreement was very favorable to Patterson in light of the strength of the evidence against him. Counsel stated that he sought to ensure that his sentencing argument would not breach the plea agreement and cause Patterson to again face more serious charges. In addition, counsel testified that Patterson's family wrote a letter for the sentencing hearing, the letter was presented to the sentencing court, and the letter appropriately expressed the family's feelings on the situation. The district court found that counsel's testimony was credible and counsel's performance before and during the sentencing hearing was reasonable. The record supports the district court's findings and Patterson failed to demonstrate his counsel's performance fell below an objective standard of reasonableness.

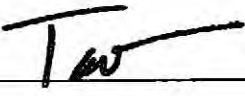
In addition, Patterson presented witnesses at the evidentiary hearing that he contended counsel should have called at the sentencing hearing to testify in mitigation. The district court found their testimony did not provide additional insight into this matter and would not have altered the outcome of the sentencing hearing. The record supports the district court's decision, and Patterson failed to demonstrate a reasonable probability of a different outcome had counsel presented additional mitigation evidence at the sentencing hearing. Therefore, the district court did not err by denying this claim.

Third, Patterson argued his counsel was ineffective for failing to explain his right to a direct appeal or file a notice of appeal. "[T]rial counsel 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). At the evidentiary hearing, counsel testified that he

reviewed the written plea agreement with Patterson, explained that Patterson retained a limited right to raise claims on direct appeal, and explained that Patterson could file a notice of appeal within 30 days of entry of the judgment of conviction. Counsel also testified that Patterson was happy with the plea bargain and they, therefore, did not have many reasons to discuss a direct appeal. Counsel also testified that Patterson did not inform him of a desire to pursue a direct appeal. The district court found counsel's testimony to be credible and that counsel explained a direct appeal to Patterson in a reasonable manner. The district court also concluded the testimony established Patterson did not ask counsel to file a direct appeal, Patterson did not express the type of dissatisfaction which would warrant the filing of a notice of appeal, and counsel did not have a duty to file a notice of appeal. The record supports the district court's decision and we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Leon Aberasturi, District Judge
Karla K. Butko
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk