

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONATHAN JOE SKENANDORE,  
A/K/A JONATHAN HABER  
SKENANDORE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80875-COA

FILED

MAR 05 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jonathan Joe Skenandore appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. First Judicial District Court, Carson City; James E. Wilson, Judge.

Skenandore argues the district court erred by denying the claims of ineffective assistance of trial-level counsel raised in his April 20, 2018, petition, and later-filed supplements. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*,

466 U.S. 668, 687 (1984), 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 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, Skenandore argued his counsel was ineffective for misunderstanding the law regarding first-degree murder, causing counsel to improperly advise Skenandore to plead guilty to second-degree murder. Skenandore asserted that the facts of the offense would not have supported a conviction of first-degree murder and counsel should not have advised him to plead guilty to second-degree murder.

The district court found that the record and the evidence produced at the evidentiary hearing demonstrated there was overwhelming evidence that Skenandore was guilty of felony murder. This finding is supported by substantial evidence in the record: Skenandore agreed to participate in a robbery of the victim, the victim died as a result of a gunshot wound that occurred during the robbery, and Skenandore actively participated in the commission of the crimes. See NRS 195.020 (stating that those aiding and abetting the commission of a crime shall be punished as a principal even if not directly committing the crime or were absent during its commission); NRS 200.030(1)(b) (defining first-degree murder as murder committed in the perpetration of a robbery); *Burnside v. State*, 131 Nev. 371, 394-95, 352 P.3d 627, 644 (2015) (“[R]obbery [is] an appropriate felony to support a felony-murder charge.”). Accordingly, Skenandore failed to

demonstrate counsel's advice to plead guilty to second-degree murder rather than proceed to trial to face a charge of first-degree murder with the use of a deadly weapon was objectively unreasonable. *See Thomas v. State*, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004) ("Judicial review of a lawyer's representation is highly deferential, and a claimant must overcome the presumption that a challenged action might be considered sound strategy."). And he failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel offered different advice regarding the plea offer. Therefore, we conclude the district court did not err by denying this claim.

Second, Skenandore argued that his counsel was ineffective for improperly advising him regarding the law concerning withdrawal from a conspiracy. Skenandore contended that he withdrew from the conspiracy prior to the commission of the robbery, counsel did not properly advise him regarding that issue, and counsel's improper advice caused him to agree to enter a guilty plea.

At the evidentiary hearing, counsel testified that he reviewed the facts of the offense and concluded Skenandore did not withdraw from the conspiracy to rob the victim. Counsel testified that the facts of the case demonstrated Skenandore was an active participant in the planning of the offense and only did not proceed to the scene of the robbery out of a concern that the victim would identify him. Because counsel concluded that Skenandore's actions did not constitute a withdrawal from the commission of the crimes, counsel believed it was likely that Skenandore would be found guilty of first-degree murder if Skenandore proceeded to trial. Accordingly,

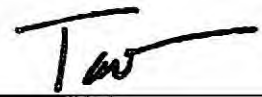
counsel advised Skenandore to accept the State's plea offer of second-degree murder. Counsel's advice was reasonable in light of the circumstances in this case. Accordingly, Skenandore failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or, in light of the overwhelming evidence of his guilt, a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel offered different advice regarding the plea offer. Therefore, we conclude the district court did not err by denying this claim.

Skenandore also argued his plea was unknowingly entered because he did not understand the implied malice element of second-degree murder. "This court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). In the case of felony murder, "[t]he felonious intent involved in the underlying felony may be transferred to supply the malice necessary to characterize the death a murder." *Collman v. State*, 116 Nev. 687, 713, 7 P.3d 426, 442 (2000). In the second amended criminal information, the State alleged Skenandore had the intent to commit robbery and the victim was killed during the commission of the robbery. At the plea canvass, the district court reviewed the allegations contained within the second amended criminal information, including Skenandore's intent to commit robbery. In response, Skenandore acknowledged that he understood the charge and that he committed the acts described in the second amended information. Given Skenandore's

admission that he had the felonious intent to commit robbery, he thus also acknowledged that he acted with malice necessary to characterize the victim's death as a murder. In light of Skenandore's acknowledgments at the plea canvass, the totality of the circumstances demonstrate that his guilty plea was knowingly and voluntarily entered, and that he understood the nature of the offense and the consequences of his plea. Therefore, 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. James E. Wilson, District Judge  
Richard F. Cornell  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk