

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KRISTIAN HEINZ WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81321-COA

FILED

MAY 07 2021

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

No. 81322-COA

KRISTIAN HEINZ WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81323-COA

KRISTIAN HEINZ WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81324-COA

KRISTIAN HEINZ WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

ORDER OF AFFIRMANCE

Kristian Heinz Walters appeals from orders of the district court dismissing in part and denying in part identical postconviction petitions filed on September 18, 2018, in district court case numbers C17-0170 (Docket No. 81321), CR17-1685 (Docket No. 81322), CR17-1688 (Docket No.

81323), and CR17-1689 (Docket No. 81324). The cases were consolidated on appeal. See NRAP 3(b). Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Docket Nos. 81322, 81323, 81324

Walters argues the district court erred by denying his claims that counsel in district court case numbers CR17-1685, CR17-1688, and CR17-1689 was ineffective regarding his pleas and sentencing. 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, Walters claimed counsel was ineffective for failing to communicate with his counsel in district court case number CR17-0170 to

come to a global plea agreement for all four cases. At the evidentiary hearing, both counsel testified there was communication between them via phone calls and emails. A global resolution was made with all of the cases, and Walters agreed to stipulate to the revocation of his probation. Therefore, Walters failed to demonstrate counsel were deficient. Moreover, Walters failed to demonstrate that further communication between counsel would have resulted in a more favorable outcome. Therefore, we conclude the district court did not err by denying this claim.

Second, Walters claimed he was coerced into pleading guilty by counsel because he felt rushed, he had mental health issues, and counsel told him that if he went to trial on all of the potential charges, he was facing a maximum of 100 to 700 years in prison. Counsel testified at the evidentiary hearing that she explained to Walters that he was looking at serious time in prison if he proceeded to trial on all of the potential charges and was potentially looking at habitual criminal treatment. She testified she never told Walters he was facing 100 to 700 years in prison. She also testified Walters told her he did not want to go to trial and agreed with her negotiation strategy. Further, she had no concerns about Walters' ability to understand the proceedings and the plea agreement. The district court found counsel was credible.

Walters testified that, while he felt rushed, he understood the terms of the guilty plea agreement, including the potential minimum and maximum sentences and that the sentences could run consecutively. Further, he stated he was happy that he would only be convicted of 4 charges and not the 16 charges he was facing. He did not demonstrate how his alleged mental health issues impacted his ability to understand the guilty plea agreement. In light of these facts, we conclude Walters failed to

demonstrate he was coerced and that counsel was ineffective. Therefore, we conclude the district court did not err by denying this claim.

Third, Walters claimed counsel was ineffective for failing to communicate an offer that would have resolved all of his cases for a sentence amounting to four to ten years in prison. Walters claimed this offer was extended in justice court and he did not find out about this potential offer for several weeks. He stated that, when he did learn about it in a letter in his discovery, the State had already revoked the offer. He claimed that he destroyed the letter that contained the offer because it included information that he cooperated with the police and he did not want the other jail inmates to find it.

Counsel has a duty to convey favorable plea offers to her client, and the failure to do so is objectively unreasonable. *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To demonstrate prejudice in such a situation, a petitioner must show a reasonable probability of four things: (1) he would have accepted the earlier, uncommunicated plea offer; (2) the State would not have rescinded the offer prior to entry of the plea; (3) the trial court would not have rejected the guilty plea; and (4) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Id.* at 147.

Counsel testified that no such offer was extended to Walters and the only offer made was the offer Walters ultimately accepted. The district court found counsel’s testimony credible and that Walters failed to show the State would not have rescinded the offer given the additional cases that were filed after Walters claimed the offer was extended to him. These findings are supported by the record. Because he failed to demonstrate the alleged offer was ever extended, Walters failed to demonstrate deficiency or

prejudice. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Walters claimed counsel was ineffective for failing to investigate and present mitigating information at sentencing. Walters claimed counsel should have presented the fact that Walters met with police and cooperated. Further, Walters claimed counsel should have presented family members and a friend at sentencing who would have testified they were supportive of Walters receiving mental health treatment and counseling for his substance abuse issues. Finally, Walters claimed counsel erred by telling the sentencing court that a friend of Walters stated he should be removed from society, because the friend now claims she never said that.

Counsel provided a substance abuse evaluation and a psychological evaluation in mitigation at sentencing. Further, the district court found that Walters failed to provide any information at the evidentiary hearing that he cooperated with the police in case numbers CR17-1685, CR17-1688, and CR17-1689. As to family members and friends willing to testify, counsel testified she contacted them but they informed her that they were unwilling to write letters or offer testimony at sentencing. They told her they “had just had it with Mr. Walters and weren’t willing to step up to the plate for him at sentencing to argue or present mitigation to support any type of leniency in sentencing.” The district court found counsel’s testimony credible and that it was corroborated by his family members, who testified at the evidentiary hearing that they were angry and were unwilling to testify at the sentencing hearing. The record supports the findings of the district court, and we conclude counsel was not deficient. Further, Walters failed to demonstrate that counsel’s comment that the

friend stated she thought Walters should be removed from society prejudiced him because he failed to show a reasonable probability he would have received a more favorable sentence had counsel not made that comment. Therefore, we conclude the district court did not err by denying this claim.

Docket No. 81321

Walters first argues the district court erred by denying his claims that counsel was ineffective leading up to the original judgment of conviction in case number C17-0170. Walters filed his petition more than one year after entry of the original judgment of conviction on June 7, 2017.¹ Thus, Walters' claim was untimely filed. *See* NRS 34.726(1). Walters' claim was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*

The district court concluded Walters demonstrated good cause because the basis for Walters' claim was not known until February 2018, and Walters filed his petition within a reasonable time of discovering this claim. We conclude the district court did not err by concluding that Walters demonstrated cause for the delay. *See Hathaway v. State*, 119 Nev. 248, 71 P.3d 503 (2003). However, Walters was also required to demonstrate prejudice, i.e., that the “errors in the proceedings underlying the judgment worked to [his] actual and substantial disadvantage.” *See Huebler v. State*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

Walters' claim was that counsel was ineffective for failing to inform him prior to sentencing that there were other charges forthcoming.

¹Walters did not pursue a direct appeal from the judgment of conviction entered in CR17-0170.

Walters claimed that, had he known there were forthcoming charges, he would have attempted to attain a global resolution to all of his cases.

At the evidentiary hearing, counsel testified that he received an email from the State the day before sentencing advising him that the State was aware of two other investigations into Walters but, at that point, they were just “hearsay.” Counsel testified he talked with Walters about whether he wanted to proceed to sentencing or wait and Walters told him he was adamant he wanted to go to sentencing. The district court found counsel credible. The record supports the finding of the district court, and we conclude Walters failed to demonstrate counsel was deficient. We also conclude that, since Walters failed to demonstrate counsel was deficient, he also failed to meet the prejudice prong to overcome the procedural bar. Therefore, Walters’ claim relating to the original judgment of conviction in CR-17-0170 was procedurally barred. Because the district court reached the correct result, i.e., denied the claim, we affirm the decision of the district court. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

Walters also argues the district court erred by denying his claim that counsel was ineffective regarding the revocation of his probation. Walters’ probation was revoked on November 29, 2017; therefore, this claim was timely raised. Walters claimed counsel was ineffective for stipulating to the revocation of probation. Walters argued that his probation was revoked based on the new charges filed after sentencing in this case but which were based on conduct that occurred prior to being placed on probation. He also claimed counsel was ineffective for failing to argue for a

lesser sentence than the underlying sentence imposed in the original judgment of conviction.

The probation violation report filed in this case alleged a violation of an extended protection order. The report alleged Walters contacted the subject of the protection order twice after being placed on probation. Walters did not claim he did not commit these infractions. Therefore, he failed to demonstrate counsel was deficient for stipulating to revocation. Further, counsel testified he did not argue for a lesser sentence because Walters stipulated to the underlying sentence in the plea agreement. Thus, counsel was not deficient for failing to argue for a lesser sentence. Accordingly, we conclude the district court did not err by denying this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Second Judicial District Court
Second Judicial District Court, Dept. 10
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk