

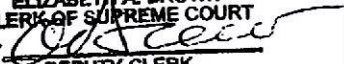
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIYACTE REGENE HARRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82100-COA

FILED

SEP 24 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tiyacte Regene Harris appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In his December 16, 2014, petition, Harris claimed that his counsel was ineffective. 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—deficiency and prejudice—must be shown,

21-27606

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, Harris claimed that his counsel was ineffective for failing to inform him of a DVD and stating he could not view the DVD unless he proceeded to a trial. Harris did not allege what was on the DVD, where it was from, or how he was prejudiced by any issue stemming from a DVD. Accordingly, Harris failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed differently. Therefore, we conclude the district court did not err by denying this claim. *See Ripppo v. State*, 134 Nev. 411, 426, 423 P.3d 1084, 1100 (2018).

Second, Harris claimed that his counsel was ineffective for failing to communicate with him while he was housed in the county jail. Harris did not identify any issues counsel failed to discuss with him and did not specify why he believed additional discussions with counsel were necessary. Accordingly, Harris failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed

differently. Therefore, we conclude the district court did not err by denying this claim. *See id.*

Third, Harris claimed his counsel did not conduct an investigation. Harris did not identify any information counsel should have attempted to investigate. Harris thus failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed differently. Therefore, we conclude the district court did not err by denying this claim. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (explaining that a petitioner claiming counsel should have conducted an investigation must identify what the investigation would have revealed).

Fourth, Harris appeared to claim that his counsel was ineffective because counsel had a conflict of interest. A conflict of interest exists if "counsel actively represented conflicting interests" and the "conflict of interest adversely affected [the defendant's] lawyer's performance." *Strickland*, 466 U.S. at 692. "In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Harris did not allege counsel actively represented conflicting interests or that counsel was placed in a situation conducive to divided loyalties. Accordingly, Harris failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness. Therefore, we conclude the district court did not err by denying this claim. *See Rippo*, 134 Nev. at 426, 423 P.3d at 1100.

Fifth, Harris claimed that his counsel coerced him into pleading guilty. Harris did not indicate how counsel coerced him. Harris acknowledged in the written plea agreement that he entered into the plea agreement voluntarily and did not act under duress or coercion. Harris also asserted at the plea canvass that no one forced him to plead guilty and he acted voluntarily. Given the acknowledgments Harris made in the written plea agreement and at the plea canvass, he failed to demonstrate his counsel coerced him into pleading guilty or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed different actions concerning entry of Harris' plea. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Harris claimed that his counsel was ineffective at the sentencing hearing because counsel did not use all available resources to obtain a fair sentence. Through the entry of his guilty plea, Harris acknowledged that he committed assault with the use of a deadly weapon by threatening others with a box cutter. Harris thus faced a potential prison term of one to six years. *See* 2013 Nev. Stat., ch. 88, § 1, at 292-93 (NRS 200.471(2)(b)). However, the sentencing court suspended his prison sentence and placed him on probation. In light of the record concerning Harris' crime and potential prison sentence, Harris does not demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel presented additional information to the sentencing court at that hearing. Therefore, we conclude the district court did not err by denying this claim.

Seventh, Harris claimed his counsel was ineffective for failing to file a notice of appeal or properly explain his right to a direct 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). Harris did not claim he asked counsel to file an appeal, and he did not allege he expressed the type of dissatisfaction which would have required counsel to file a notice of appeal. Further, Harris specifically waived his right to appeal in his guilty plea agreement. Therefore, we conclude the district court did not err by denying this claim.

Next, Harris claimed the State withheld exculpatory evidence. Harris also requested to have his ankle bracelet removed. These claims fell outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. *See* NRS 34.810(1)(a). Therefore, we conclude the district court did not err by denying relief.

Finally, Harris requested the appointment of postconviction counsel. The appointment of counsel in this matter was discretionary. *See* NRS 34.750(1). When deciding whether to appoint counsel, the district court may consider factors, including whether the issues presented are difficult, whether the petitioner is unable to comprehend the proceedings, or whether counsel is necessary to proceed with discovery. *Id.*; *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d 760, 761 (2017). Because Harris’ petition was a first petition not subject to summary dismissal, *see* NRS 34.745(1), (4), he met the threshold requirements for the appointment of

counsel. See NRS 34.750(1); *Renteria-Novoa*, 133 Nev. at 76, 391 P.3d at 761. However, the issues in this matter were not difficult, Harris was able to comprehend the proceedings, and discovery with the aid of counsel was not necessary. Therefore, we conclude the district court did not err by denying the motion for the appointment of counsel. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Tiyacte Regene Harris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk