

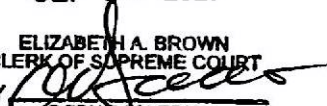
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBIN DINO MACKIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82115-COA

FILED

SEP 28 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Robin Dino Mackie appeals from an order of the district court denying a June 10, 2019, motion to withdraw guilty plea,¹ a July, 19, 2019, postconviction petition for a writ of habeas corpus, and later-filed supplements. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Mackie argues the district court erred by finding that his petition became moot when he was released from custody following the expiration of his sentence. The Nevada Supreme Court has held that, if a postconviction petition challenging a conviction was filed while the petitioner was in custody, the petition does not become moot upon the petitioner's subsequent release from custody if the petitioner faces collateral consequences stemming from the conviction. *Martinez-*

¹The district court properly construed Mackie's motion to withdraw guilty plea as a postconviction petition for a writ of habeas corpus. See *Harris v. State*, 130 Nev. 435, 448-49, 329 P.3d 619, 628 (2014).

Hernandez v. State, 132 Nev. 623, 626-27, 380 P.3d 861, 864 (2016). In addition, there is a presumption that a petitioner faces collateral consequences from the conviction. *Id.* at 627-28, 380 P.3d at 864-65.

Here, the district court denied Mackie's petition in part because it found the petition became moot when Mackie expired his sentence. Because Mackie filed his petition when he was incarcerated and there is a presumption he faces collateral consequences stemming from his conviction, the district court erred by denying Mackie's petition as moot. The district court also denied the petition because Mackie failed to demonstrate that his underlying claims were meritorious. As we explain below, because the district court properly concluded Mackie was not entitled to relief, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his pleadings below, Mackie 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. *Strickland*, 466 U.S. at 687. 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, Mackie claimed that his trial-level counsel was ineffective for improperly inducing him to enter a guilty plea and by failing to explain the potential sentence he faced from entry of a guilty plea. In the written plea agreement, Mackie acknowledged that he accepted the plea agreement voluntarily and did not act under duress or coercion. Mackie likewise acknowledged that he understood that as a consequence of entry of a guilty plea to the offense of attempted battery with the use of a deadly weapon, the sentencing court had the discretion to treat his offense as either a gross misdemeanor or a felony. Mackie acknowledged that he understood he faced a sentence of not more than 364 days in jail if the sentencing court elected to treat the offense as a gross misdemeanor. Mackie also acknowledged that he understood he faced a sentence of one to four years in prison if the sentencing court elected to treat his offense as a felony. In addition, Mackie acknowledged in the written plea agreement that he signed that agreement after consultation with counsel and that counsel had answered all of his questions concerning the agreement.

Given the acknowledgments Mackie made in the written plea agreement, he failed to demonstrate his counsel improperly induced him into pleading guilty or failed to explain the potential sentences he faced

from entry of his guilty plea. Mackie also 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 concerning the plea agreement or explained the plea agreement in a different manner. Therefore, we conclude the district court did not err by denying this claim.

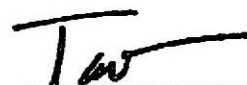
Second, Mackie appeared to claim that his counsel was ineffective for failing to object when the arresting officer asserted Mackie was under the influence of a controlled substance when he was detained. Mackie also appeared to claim that counsel should have objected when Mackie was held in custody for use of a controlled substance. Mackie did not identify any bases upon which counsel should have opposed these actions. Mackie also failed to allege that there was a reasonable probability of a different outcome had counsel raised an objection to the arresting officer's claims concerning Mackie's use of a controlled substance or his placement in custody due to use of a controlled substance. Accordingly, Mackie failed to allege specific facts that demonstrated his counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel performed different actions. Therefore, we conclude the district court did not err by denying this claim. *See Rippo v. State*, 134 Nev. 411, 426, 423 P.3d 1084, 1100 (2018).

Next, Mackie appeared to claim he was improperly arrested by an officer dressed in plain clothes rather than a uniform. Mackie also appeared to claim he was improperly placed into custody for being "high"

despite the officer's failure to test whether he had used a specific substance. These claims were not based on an allegation that Mackie's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, these claims were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Accordingly, we conclude Mackie was not entitled to relief based upon these claims, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 19
The Gersten Law Firm PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk