

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ALLEN MACK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83165-COA

FILED
APR 11 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Allen Mack appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 19, 2015, and an amended petition filed on September 22, 2015. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Mack claims the district court erred by denying his claims of ineffective assistance of defense counsel. 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, Mack claimed counsel caused him to enter his *Alford*¹ plea while Mack was suffering from the effects of a stroke. Mack alleged he was not of sound mind at the time of entry of his plea, counsel had a duty to request a mental competency evaluation, and counsel should not have allowed Mack to enter his plea until he had regained his sound mind. Mack's bare claim failed to specifically allege how the stroke prevented his "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [or] a rational as well as factual understanding of the proceedings against him." *Melchor-Gloria v. State*, 99 Nev. 174, 180, 660 P.2d 109, 113 (1983) (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

Moreover, at the evidentiary hearing on Mack's petition, counsel testified that he was aware Mack had medical issues but saw no reason to seek a competency evaluation. Counsel explained that even after Mack had been in the hospital, he was able to answer questions clearly and concisely and had no apparent issues with recollection or being able to assist counsel. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Mack claimed counsel failed to conduct an adequate investigation. Mack claimed that counsel should have interviewed the

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).

victim's four prior husbands, the victim's friends and acquaintances, and Mack's daughter about the victim's mental capacity. Mack also alleged counsel never attempted to obtain information related to the victim's history of mental illness. Mack presented no evidence about the victim's history of mental illness or what the witnesses would have said. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Third, Mack claimed counsel failed to inform him of the consequences of being a Tier III sex offender prior to the entry of his plea. Counsel was not required to inform Mack of the collateral consequences of sex offender registration and notification. *See Nollette v. State*, 118 Nev. 341, 349-50, 46 P.3d 87, 93 (2002) (holding that counsel was not ineffective for failing to inform client about sex offender registration and notification requirement because it is a collateral consequence of a guilty plea). Moreover, Mack's bare claim failed to allege of what consequences counsel failed to inform Mack. Finally, the district court found that Mack's plea agreement stated that Mack would be considered a Tier III sex offender; Mack, his attorney, and the prosecutor all placed their initials next to this provision in the plea agreement; and the trial-level court extensively canvassed Mack about the registration and supervision requirements. These findings are supported by substantial evidence in the record. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if

not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Mack claimed counsel failed to review the facts of the case and discuss any defenses with him. Mack presented no evidence that counsel failed to review the facts of the case or discuss any defenses with him. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Mack claimed counsel failed to inform him that he faced a prison sentence of 8 to 20 years. Mack claimed he thought he would be eligible for parole after serving two years in prison. Mack failed to demonstrate by a preponderance of the evidence that counsel failed to inform him that he could be sentenced to up to 8 to 20 years in prison; Mack thought he would be eligible for parole after serving two years in prison; or but for the alleged deficiency, he would not have pleaded guilty and would have insisted on going to trial. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Finally, Mack claimed counsel had a conflict of interest that counsel never disclosed to him. Mack claimed counsel owed his continued employment to serving the interests of the District Attorney's Office because counsel was hired by the District Attorney's Office, the District Attorney represented counsel before the Board of County Commissioners,


and the District Attorney controls the public defender contracts and was counsel's supervisor. 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).

Mack failed to demonstrate the alleged facts underlying this claim by a preponderance of the evidence. Accordingly, Mack failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kimberly A. Wanker, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk