

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRYSTAL YVONNE AUSTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83345-COA

FILED

APR 11 2022

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

ORDER OF AFFIRMANCE

Crystal Yvonne Austin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Austin argues the district court erred by denying her July 17, 2020, petition and later-filed supplement without first conducting an evidentiary hearing. In her petition, Austin claimed her 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 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). To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Austin claimed that her trial counsel was ineffective for failing to inform the sentencing court of errors contained within the presentence investigation report (PSI). Austin appeared to claim that the PSI did not include the proper dates for her prior convictions of driving under the influence. Austin also appeared to claim that her PSI improperly stated she had unpaid traffic tickets, failed to appear, did not comply with drug and alcohol testing, and was in an altercation and was charged with simple battery.

Preliminarily, Austin did not include a copy of the PSI in her appendix. As the appellant, it is Austin’s obligation to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009); *see also* NRAP 30(b)(3) (stating the appellant’s appendix filed on appeal shall include “any other portions of the record essential to determination of issues raised in appellant’s appeal”).

In addition, during the sentencing hearing, the parties noted that a portion of the PSI concerning Austin's arrest and conviction dates for a prior DUI were confusing, but counsel explained to the sentencing court that it appeared that there was a lengthy delay between Austin's arrest and conviction because Austin had been in a diversionary program. In light of the discussion during the sentencing hearing, Austin did not demonstrate that her counsel's performance fell below an objective standard of reasonableness. In addition, the sentencing court made no reference to any portion of the PSI when it imposed sentence. Accordingly, Austin did not demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel informed the sentencing court of errors contained within the PSI. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.


Second, Austin claimed that her trial counsel was ineffective for failing to investigate the facts of the case prior to entry of her guilty plea. A petitioner claiming that counsel should have conducted an investigation must identify what the investigation would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Austin failed to identify what an investigation into the facts of her case would have revealed. Austin also did not explain how any failure to investigate bore upon her decision to enter a guilty plea. Accordingly, Austin did not demonstrate a reasonable probability that she would have refused to plead guilty and would have insisted on proceeding to trial had counsel conducted an investigation. Therefore, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.


Third, Austin claimed that her trial counsel was ineffective for failing to impeach victim impact testimony during the sentencing hearing. Austin asserted that the victim's testimony concerning the facts of the offense was not accurate. During the sentencing hearing, counsel cross-examined the victim concerning her version of events. Counsel also noted during the sentencing hearing that many of the victim's statements concerning the incident were not supported by the factual evidence, and counsel urged the sentencing court to disregard those statements when it imposed Austin's sentence. In light of counsel's cross-examination of the victim and request for the sentencing court to disregard the victim's unsupported statements, Austin did not demonstrate that her counsel's performance fell below an objective standard of reasonableness. Austin also failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel performed different actions concerning the victim's impact testimony. Therefore, we conclude that the district court did not err by denying this claim without conducting an evidentiary hearing.

Finally, we note that the district court concluded that the claims regarding Austin's PSI and the victim-impact statement were outside the scope of a petition challenging a judgment of conviction pursuant to a guilty plea because those claims challenged counsel's performance only at the sentencing hearing. The district court's conclusion was erroneous because the Nevada Supreme Court has held that claims of ineffective assistance of counsel concerning counsel's performance at a sentencing hearing may be raised in a petition challenging a judgment of conviction entered pursuant to a guilty plea. *See Gonzales v. State*, 137

Nev., Adv. Op. 40, 492 P.3d 556, 562 (2021). However, for the reasons stated above, we nevertheless affirm the district court's decision to deny relief. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding a correct result will not be reversed simply because it is based on the wrong reason). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk