

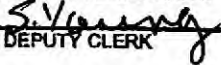
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DWIGHT CONRAD SOLANDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83506-COA

FILED

JUN 13 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Dwight Conrad Solander appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In his January 5, 2021, petition, Solander claimed he received ineffective assistance of counsel. 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, Solander claimed trial-level counsel was ineffective for failing to investigate the victims' statements and prior history, medical providers, and reports. Solander failed to identify what the investigations would have revealed. Accordingly, Solander failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged errors. See *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim.

Second, Solander claimed trial-level counsel was ineffective for failing to prepare for trial, contact witnesses to testify, and settle evidentiary issues. Solander alleged that counsel's failure forced him to take a plea deal. Solander failed to identify what preparation counsel should have done, what the witnesses' testimony would have been, and what evidentiary issues needed settling or how counsel should have settled them. Accordingly, Solander failed to demonstrate counsel's performance was deficient or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Third, Solander claimed trial-level counsel was ineffective for failing to pursue severance of his case from his codefendants' cases after the facts of the case "became known." Solander's counsel moved unsuccessfully for severance, and Solander failed to allege what facts became known or what counsel should have done differently. Accordingly, Solander failed to demonstrate counsel's performance was deficient or a reasonable

probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Solander claimed trial-level counsel was ineffective for failing to follow up on court-ordered discovery from the State. Solander failed to explain the discovery's significance to his decision to plead guilty. Accordingly, Solander failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial absent counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Solander claimed trial-level counsel was ineffective for failing to convey an earlier plea deal. Solander alleged the earlier deal was more favorable and he would have accepted it but did not have an opportunity to do so because he was told he would need to testify. Instead, Solander claimed, the deal was rejected and negotiations fell apart. Counsel is deficient when he fails to communicate a favorable guilty plea offer to his client. *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To demonstrate prejudice from counsel's failure, a defendant must show a reasonable probability that: (1) but for counsel's deficient performance, he would have accepted the earlier guilty plea offer; (2) the guilty plea would have been entered without the prosecution withdrawing the offer or the trial court rejecting it; and (3) the result of the guilty plea would have been more favorable by reason of a guilty plea to a lesser charge or a sentence of less prison time. *Id.* at 147. Solander did not specify the terms of the deal or that he did not know about it. Accordingly, Solander failed to demonstrate a reasonable probability of a different outcome absent counsel's alleged error. Therefore, we conclude the district court did not err by denying this claim.

Sixth, Solander claimed appellate counsel was ineffective. Specifically, Solander alleged counsel failed to address issues, counsel's work was "riddled with errors," counsel was sanctioned and ordered to file documents, and counsel's briefing was deficient. Solander failed to identify what issues counsel should have raised, what errors counsel made, the sanctions and orders counsel was subject to, how counsel's briefing was deficient, or how the alleged errors affected the outcome of the appeal. Accordingly, Solander failed to demonstrate that counsel's performance fell below an objective standard of reasonableness or a reasonable probability of success on appeal. *See Kirksey*, 112 Nev. at 998, 923 P.2d at 1114. Therefore, we conclude the district court did not err by denying this claim.

Next, Solander claimed incriminating evidence was obtained through illegal search and seizure, his case should have been severed from his codefendants' cases, there was insufficient evidence of substantial bodily harm, and comments made by the district court judge during the trial-level and sentencing proceedings constituted unsupported judicial factfinding. These claims neither challenged the validity of his guilty plea nor alleged that Solander received ineffective assistance of counsel. Accordingly, they are outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. *See NRS 34.810(1)(a)*. Therefore, we conclude the district court did not err by denying these claims.

Finally, Solander claimed he was actually innocent. The Nevada Supreme Court has never held that a freestanding claim of actual innocence can be raised in a postconviction petition for a writ of habeas corpus. *See Berry v. State*, 131 Nev. 957, 967 n.3, 363 P.3d 1148, 1154 n.3 (2015) (noting the Nevada Supreme Court "has yet to address whether and,

if so, when a free-standing actual innocence claim exists"). Because Solander has a remedy with which to raise his freestanding claim of actual innocence, *see* NRS 34.900-.990, we decline to consider it here.¹

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Joseph Hardy, Jr., District Judge
Dwight Conrad Solander
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We express no opinion as to whether Solander could satisfy the requirements of a petition to establish factual innocence.