

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAN KATHRYN WENGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86027-COA

FILED

OCT 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joan Kathryn Wenger appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on December 5, 2022. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Wenger argues the district court erred by denying her claims that trial counsel was ineffective. To demonstrate ineffective assistance of trial 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*). Both components of the inquiry 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). A petitioner must support their claims with specific factual allegations that

are not belied by the record and, if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Wenger argued that counsel was ineffective for failing to offer her “options.” Wenger’s bare claim failed to allege what “options” counsel should have offered her. Therefore, we conclude Wenger failed to allege specific facts demonstrating counsel was deficient or a reasonable probability of a different outcome at sentencing but for counsel’s errors. See *Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (stating a petitioner “must *specifically explain* how his attorney’s performance was objectively unreasonable”). Accordingly, we conclude the district court did not err by denying this claim.¹


Second, Wenger argued that counsel was ineffective for failing to argue for a sentence of 10 to 25 years, which was the sentence agreed to be recommended by the parties. The district court found that counsel argued for a sentence of 10 to 25 years, and the district court’s finding is supported by substantial evidence. Wenger’s bare claim failed to allege what other arguments counsel should have made. Therefore, Wenger failed to allege specific facts demonstrating counsel was deficient or a reasonable probability of a different outcome at sentencing but for counsel’s errors. Accordingly, we conclude the district court did not err by denying this claim.²

¹To the extent Wenger argues on appeal that counsel was ineffective for failing to seek a different plea agreement, this argument was not raised below, and we decline to consider it in the first instance. See *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999).

²To the extent Wenger argues on appeal that counsel should have made objections or made other statements at sentencing regarding her

Third, Wenger argued that counsel was ineffective for failing to object when the State said her crime was intentional. The district court found that the defense argued this was an accident and not intentional and that the State properly made its argument both based on the facts and in light of the defense's assertions. The district court noted that the sentencing court considered both Wenger's and counsel's arguments. The record supports the findings of the district court. Thus, we conclude Wenger failed to demonstrate counsel was deficient or a reasonable probability of a different outcome at sentencing had counsel objected. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

potential sentence, these arguments were not raised below, and we decline to consider them in the first instance. *See id.*

³We have reviewed all documents Wenger has filed in this matter, and we conclude no relief based upon those submissions is warranted. Further, we conclude that Wenger is not entitled to counsel on appeal.

cc: Hon. Thomas W. Gregory, District Judge
Joan Kathryn Wenger
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk