


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMBER MARIE WHARTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86184-COA

**FILED**

NOV 13 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Amber Marie Wharton appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on April 4, 2022. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

First, Wharton contends the district court erred by denying her claims of ineffective assistance of counsel. 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).

Wharton claimed that counsel was ineffective at sentencing for making inaccurate statements, not reading through her case, and not “hear[ing] her out.” Wharton also claimed that she had insufficient one-on-one time with counsel. Wharton’s counsel successfully argued for probation for Wharton despite her criminal history, which included poor performance on supervision, and after she pleaded guilty to escaping from custody and was arrested on a new offense. Wharton thus failed to demonstrate a reasonable probability of a different outcome at sentencing but for counsel’s alleged errors. Therefore, we conclude the district court did not err by denying this claim.

Second, Wharton contends the district court erred by denying her claim that she should have been charged with attempted escape rather than escape. This claim was waived because it could have been raised on direct appeal. *See Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223-24 (1999). Therefore, we conclude the district court did not err by denying this claim.

Finally, Wharton contends on appeal that (1) counsel told her she would only serve a two-year prison sentence and she would not have pleaded guilty if she knew she would serve the entire minimum term, (2) her right to a speedy trial was violated, and (3) the district court erred in sentencing her based on her criminal history and not on the facts of the offense. Wharton did not raise these claims in her petition and we decline to consider them for the first time on appeal. *See* NRS 34.750(5) (providing that after the filing of a postconviction habeas petition, “[n]o further pleadings may be filed except as ordered by the court”); *McNelton v. State*, 115 Nev. 396, 415-16, 990 P.2d 1263, 1275-76 (1999) (declining to address

new argument on appeal absent a demonstration of good cause and prejudice for not raising the argument below). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Tara D. Clark Newberry, District Judge  
Amber Marie Wharton  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk