


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAUREN LOANNA PRESCIA,
Appellant,
vs.
JERRY HOWELL, WARDEN,
Respondent.

No. 86464-COA

FILED

FEB 23 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING*

Lauren Loanna Prescia appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on November 22, 2021, and a supplement filed on October 25, 2022. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

Prescia argues the district court erred by denying her claims of 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, 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 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, Prescia claimed her plea was entered without the effective assistance of counsel because counsel failed to advise her that she was stipulating to a prison sentence of 6 to 20 years for the charge of driving under the influence resulting in death. Prescia alleged that counsel instead told her she would serve 5 years in prison, 1 year out on house arrest, and then would be "done." During the hearing where Prescia entered her plea, counsel recited the plea negotiation to the district court, explaining that the parties were going to "jointly recommend a sentence of 6 to 20 years" in prison for that count. During the plea canvass, Prescia informed the court that she had read and signed the guilty plea agreement, which provided that she agreed to stipulate to a 6-to-20-year prison sentence.

The district court conducted an evidentiary hearing regarding this claim wherein counsel, Prescia, and Prescia's aunt testified. Prescia testified that counsel told her she would be sentenced to "[j]ust five years in prison and one year out on house arrest, and I'd be done." She further testified that counsel never told her she faced a 6-to-20-year prison sentence. The district court found this testimony was not credible. In addition, the district court implicitly found credible counsel's testimony that (1) he made it clear to Prescia that she was agreeing to the 6-to-20-year sentence enumerated in the plea agreement, and (2) he explained to her that with her lack of a criminal record, the practical or functional effect of her 6-to-20-year sentence would likely be to serve five years in custody and

one year under alternative incarceration. We defer to the district court's credibility determinations. See *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) ("This court will not . . . evaluate the credibility of witnesses because that is the responsibility of the trier of fact.").

Finally, Prescia's aunt, who was present when counsel and Prescia went over the plea agreement, testified that she did not recall counsel saying the sentence would be 6 to 20 years and only recalled counsel saying "five years in; one year out." The district court found that her testimony did not undermine counsel's testimony or the statements Prescia made during her plea canvass. This finding is supported by the record. In light of these circumstances, Prescia failed to prove by a preponderance of the evidence that counsel failed to advise her of the 6-to-20-year prison sentence she faced. Accordingly, Prescia failed to demonstrate counsel's performance was objectively unreasonable or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial but for counsel's alleged errors. Therefore, we conclude the district court did not err by denying this claim.


Prescia also claimed that counsel was ineffective for failing to argue mitigating circumstances at sentencing regarding the charge of the child abuse, neglect, or endangerment. Counsel argued for a sentence of two to five years in prison, and the district court imposed the requested sentence.¹ Accordingly, Prescia failed to demonstrate counsel's performance was objectively unreasonable or a reasonable probability of a different outcome had counsel argued mitigating circumstances at

¹Prescia did not allege that counsel was ineffective for arguing for this sentence.

sentencing. Therefore, we conclude the district court did not err by denying this claim.

Prescia also argues the district court erred by failing to address her appeal deprivation claim in its order denying her petition. The district court's order intended to dispose of the entirety of Prescia's petition, but the order did not include findings of fact and conclusions of law regarding this claim. Therefore, we vacate the district court's decision as to this claim, remand this matter to the district court, and direct the district court to issue an order containing the specific findings of fact and conclusions of law required by NRS 34.830(1) to support its decision as to this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Lowe Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk