IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEENAN WATKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85918-COA

ORDER OF AFFIRMANCE

Keenan Watkins appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on February 12, 2022, and a supplemental petition filed on June 7, 2022. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

Watkins argues the district court erred by denying his claims that counsel were ineffective.[1] 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);

[1]Watkins was represented by several different counsel during the pendency of this case. Watkins was originally represented by Michael Miceli. Approximately two years after Watkins was indicted, Craig Mueller's law firm substituted in as counsel, and three members of that firm handled the case: Clay Plummer initially was the lead attorney; when he left the law firm, Mr. Mueller took over; trial was handled primarily by Jay Maynard and Mr. Mueller; and Mr. Maynard handled Watkins' sentencing. Watkins was represented on appeal by Augustus Claus.

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, 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, Watkins argued that trial counsel were ineffective for failing to make sufficient arguments to the trial court to show that a codefendant, Duncan, should not have been allowed to plead the Fifth Amendment. About a year prior to trial, Duncan gave Mr. Plummer a letter stating that Watkins was not an active participant in the crimes. Watkins wanted to have Duncan testify that he coerced Watkins into participating in the crimes so that he could argue he acted under duress. On the day he was scheduled to testify, Duncan, with the advice of counsel, invoked his Fifth Amendment right not to incriminate himself. Thus, he did not testify at trial.

The underlying claim—that Duncan could not assert his Fifth Amendment rights—was raised on direct appeal and was rejected by this court. *Watkins v. State*, No. 79719-COA, 2021 WL 2134515 (Nev. Ct. App. May 25, 2021) (Order of Affirmance) (concluding there was "no error, plain or otherwise"). "The law of a first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same." *Hall v. State*, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975). This court's conclusion that there was no error, plain or otherwise, when the district court allowed

Duncan to plead the Fifth Amendment and not testify at trial constituted the law of the case.

Watkins argued that an exception to the doctrine of the law of the case applied because the failure to consider his claim would result in a manifest injustice. *See Clem v. State*, 119 Nev. 615, 620, 81 P.3d 521, 525 (2003) (stating "[w]e will only depart from our prior holdings only where we determine that they are so clearly erroneous that continued adherence to them would work a manifest injustice"). Watkins argued that if Duncan had not been allowed to assert his Fifth Amendment rights, he would have been able to present his duress defense at trial and would have prevailed.

At trial, the State presented testimony from the victims that three people entered the home, one after the other, and all three people had guns. One of the victims testified that Watkins, who was left alone with her, held a gun on her, threatened her, and threatened to shoot her boyfriend if he came home during the robbery. Further, one of the other victims corroborated that Watkins was left alone with the above victim. None of the victims testified to seeing Duncan threaten Watkins or that Watkins seemed reluctant or fearful.

Duncan provided three differing versions of events. His first version was presented in his voluntary statement to police that occurred shortly after his arrest. Duncan said that he, "Fudge," and Watkins went to a house to steal marijuana, guns, and money from the occupants. He said Watkins and Fudge had guns, the three codefendants entered the home together, and they demanded the marijuana, guns, and money. He admitted to taking two handbags. Ultimately, the three fled the home when police arrived.

The second version was provided in a letter Duncan gave to Mr. Plummer about a year prior to trial.[2] The letter stated that Duncan asked Watkins to drive him to the victims' home to buy marijuana. They both went inside but when Duncan began trying to take the marijuana by force, Watkins wanted out. Duncan then told Watkins that he could not leave because Duncan had his car keys and would take Watkins' belongings. He also said he made up the third perpetrator, Fudge.

The third version was provided in a sworn declaration from Duncan during the postconviction proceedings. In the declaration, Duncan claimed he "coerced [Watkins] by threatening him with great bodily harm if he did not cooperate. I made him believe that if he did not help us, he would be killed."

All three of the statements provided by Duncan are different, and only the last one clearly implicates the duress defense. *See* NRS 194.010(8) (stating a person cannot be convicted of a crime where they "committed the act . . . charged under threats or menaces sufficient to show that they had reasonable cause to believe, and did believe, their lives would be endangered if they refused, or that they would suffer great bodily harm"). Further, Duncan did not testify at the evidentiary hearing, and the district court was thus not given the opportunity to judge his credibility.[3] Given the

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[2]At the evidentiary hearing, Mr. Miceli also recalled having received a copy of a letter from Duncan.

[3]Watkins attempted to secure Duncan's appearance at the evidentiary hearing, but the subpoena was unable to be served. Watkins concedes that "just before the hearing [Duncan] was located locked up

differing nature of the statements provided by Duncan and the evidence presented at trial, Watkins did not demonstrate the facts of his duress defense by a preponderance of the evidence. Thus, he failed to demonstrate a manifest injustice sufficient to warrant a departure from the doctrine of the law of the case. And for the same reasons, he failed to demonstrate a reasonable probability of a different outcome had counsel made different arguments as to whether Duncan should have been allowed to plead the Fifth Amendment. Accordingly, we conclude the district court did not err by denying this claim.[4]

Second, Watkins argued that his pretrial counsel were ineffective for failing to investigate his duress defense. Watkins claimed that the letter Duncan gave Mr. Plummer should have caused counsel to

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September 27, 2022 at CCDC." It is not clear from this sentence whether Watkins learned this fact in September or just days before the November 29, 2022, evidentiary hearing. Nevertheless, Watkins did not seek a continuance of the evidentiary hearing to secure Duncan's appearance.

[4]Watkins also argued that Mr. Claus was ineffective for failing to make sufficient arguments on appeal to show that Duncan should not have been allowed to plead the Fifth Amendment. To demonstrate prejudice for an ineffective-assistance-of-appellate-counsel claim, a petitioner must demonstrate that the omitted issue would have had a reasonable probability of success on appeal. *See Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996). As indicated above, the letter provided to Mr. Plummer did not demonstrate that Watkins acted under duress. Accordingly, any alleged error in failing to make additional arguments was harmless, and Watkins failed to demonstrate a reasonable probability of a different outcome on appeal had appellate counsel made further argument regarding this issue. Therefore, we conclude that the district court did not err by denying this claim.

investigate Duncan and to determine whether Duncan would testify at trial that he coerced Watkins into participating in the crimes. The district court found that three of the key factual allegations in the statement are belied or repelled by the record. These findings are supported by the record. As stated above, Duncan's statement given to counsel prior to trial did not implicate a duress defense. In his statement, Duncan stated he had Watkins' keys during the incident, but Watkins was arrested with his keys on his person. Further, Duncan stated he made "Fudge" up in his first statement to police and that it was only Duncan and Watkins who entered the home, but this statement was contradicted not only by Duncan's first statement but also by statements made by the victims. Finally, Duncan stated in his statement that Watkins "did not participate," but this statement is repelled by the witness testimony described above. Because key portions of Duncan's statement are belied or repelled by the record, Watkins did not demonstrate that objectively reasonable counsel would have further investigated Duncan or his statement.[5] Further, in light of the district court's findings, the victims' testimony, and Duncan's differing statements, Watkins failed to demonstrate a reasonable probability of a different outcome at trial had counsel further investigated Duncan. Accordingly, we conclude the district court did not err by denying this claim.

Third, Watkins argued that pretrial counsel were ineffective for failing to provide adequate advice regarding whether to enter a guilty plea. "During plea negotiations defendants are entitled to the effective assistance

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[5]We note that Mr. Micelli and a defense investigator testified to their attempts to interview and/or meet with Duncan, but Duncan refused.

of competent counsel." *Lafler v. Cooper*, 566 U.S. 156, 162 (2012) (internal quotation marks omitted). To demonstrate prejudice concerning the plea negotiation process, "a defendant must show the outcome of the plea process would have been different with competent advice." *Id.* at 163. Candid advice about the possible outcome of pleading guilty or going to trial is not evidence of deficient performance. *See Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018).

Watkins claimed that counsel did not accurately advise him regarding the law on coercion, the strength of the evidence, and the advantages and disadvantages of going to trial. He claimed that had he known he did not have a coercion defense and that the state of the evidence was strong, he would have taken a plea that was offered, which would have resulted in a sentence of 10 to 25 years in prison.[6]

The district court placed its findings on the record at a hearing that took place after the evidentiary hearing. The district court found that Mr. Mueller discussed the evidence with Watkins and told him this was not a trial case. These findings are supported by the record. At the evidentiary hearing, Mr. Mueller testified that he told Watkins the evidence against him was strong and he would likely be convicted of most of the crimes but acquitted on the kidnapping charges if they went to trial. He also testified that he believed that if Watkins went to trial, he would probably receive a similar sentence as his codefendant or probably no worse than what he had

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[6]Watkins was ultimately sentenced to an aggregate term of 20 to 75 years in prison.

been previously offered by the State.[7] Mr. Mueller testified that he based this advice on who he thought the judge would be, but the case ended up in overflow in front of a new district court judge for trial and, ultimately, sentencing.

Further, testimony was presented through counsel and Watkins that Watkins did not believe that he should receive more time than Duncan because he felt he was less culpable and that he turned down offers that were for more time than Duncan received. In light of the foregoing, we conclude that counsel's actions were not objectively unreasonable, and Duncan failed to demonstrate a reasonable probability of a different outcome in the plea negotiation process given his reluctance to agree to a sentence that was for more time than what his codefendant received. Accordingly, we conclude the district court did not err by denying this claim.

Fourth, Watkins argued that counsel was ineffective at the sentencing hearing. Specifically, he claimed that counsel should have told the district court that he was legally blind, he did not have an easy life, he lived in a bad neighborhood, his mother struggled to make ends meet, he went through counseling as a child and graduated from high school, and he had steady employment. Watkins also alleged that counsel failed to stress to the district court that Watkins insisted the purse be given back to one of

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[7]Duncan pleaded guilty to conspiracy to commit robbery, burglary while in possession of a firearm, and robbery with the use of a deadly weapon. He was sentenced to an aggregate term of 6 to 15 years in prison. Watkins was offered a deal to plead guilty to the same charges as Duncan, but the negotiation would have required him to agree to a prison sentence of 10 to 25 years.

the victims and that he was coerced into participating. He also claimed that no character letters were filed on his behalf despite there being people willing to provide them.

At sentencing, counsel argued that two of Watkins' prior convictions arose out of the same incident, he is a father now and understands the gravity of what he did, and he is working on changing his life. Counsel also argued that the other codefendants were more culpable and no one was hurt during the crimes. Counsel presented character letters from Watkins' current girlfriend and her mother. Watkins expressed his remorse for his actions and discussed how his mother struggled to do the best she could to raise him. He also took responsibility for his past and indicated he wanted to do better.

The sentencing court considered the arguments of Mr. Maynard, the State, and Watkins. It then found that Watkins deserved to receive a harsh sentence based on the extreme violence of the incident, Watkins' failure to demonstrate he had changed given his propensity to commit new crimes shortly after being released from prison on his previous crimes, the need for deterrence, and the danger he represented to the community. Given the arguments counsel made at sentencing, Watkins' allocution, and the district court's reasoning for imposing the sentence, we conclude that Watkins failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented further evidence in mitigation. Accordingly, we conclude the district court did not err by denying this claim.

Watkins also argues on appeal that the district court erred by finding that there was sufficient evidence presented at trial, because he did

not raise a claim challenging the sufficiency of the evidence. In his petition, Watkins made several claims disparaging the evidence presented at trial. Thus, the district court responded to those claims by finding that the State presented sufficient evidence at trial. Moreover, because the finding regarding the sufficiency of the evidence was ultimately irrelevant to the disposition of Watkins' petition, Watkins failed to demonstrate that any alleged error in making this finding affected his substantial rights. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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