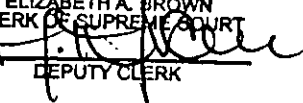


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY COBIAN,
Appellant,
vs.
NEVADA DEPARTMENT OF
CORRECTIONS SOUTHERN DESERT
CORRECTIONAL CENTER WARDEN;
AND THE STATE OF NEVADA,
Respondents.

No. 88695-COA

FILED
APR 23 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Anthony Cobian appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on September 19, 2023. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

Cobian argues the district court erred by denying his claims that his plea was not voluntarily and knowingly entered. “The district court may grant a post-conviction motion to withdraw a guilty plea that was not entered knowingly and voluntarily in order to correct a manifest injustice.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008); *see also* NRS 176.165. “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea.” *Rubio*, 124 Nev. at 1039, 194 P.3d at 1228-29 (footnote and internal quotation marks omitted).

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To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability the 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). 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).

Cobian claimed he did not understand the consequences of his plea because trial counsel erroneously informed him that the State would not oppose probation if his psychosexual evaluation resulted in a finding that he was not a high risk to reoffend. Cobian based his argument on counsel's presentence filings in which counsel stated the negotiations were that the State would not oppose probation if Cobian was found to be less than a high risk to reoffend.

The district court found Cobian was properly informed in the guilty plea agreement and during the plea canvass that the State was free to argue at sentencing. Further, the district court relied on jail phone calls that were admitted at sentencing. The district court found these calls showed "that [Cobian] understood probation was not a part of his plea agreement. He stated that were it not for the State using his confession against him, he 'would have been getting deals about house arrest and

probation' instead of for time in prison, and that he was planning to 'argue for probation.'" Given this evidence, the district court concluded Cobian failed to demonstrate that counsel misled him about the negotiations or that he misunderstood the consequences of his plea.

Cobian failed to provide this court with the jail phone calls relied upon by the district court, and we therefore presume these documents support the decision of the district court. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d, 131, 135 (2007); *see also* NRAP 30(b)(3); *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). Further, the plea canvass and guilty plea agreement demonstrate Cobian affirmed that he understood the State was free to argue at sentencing. Thus, Cobian failed to demonstrate counsel's performance was deficient or resulting prejudice. Therefore, he failed to demonstrate his plea was not knowingly and voluntarily entered, and we conclude that the district court did not err by denying this claim.

Cobian also argued his plea was not knowingly and voluntarily entered because trial counsel only met with him once prior to the plea being entered. The district court found that Cobian was not entitled to any particular relationship with counsel, that the jail phone calls indicated Cobian had communicated with counsel more than once, and that counsel's investigator met with Cobian several times. Because Cobian failed to provide this court with the jail phone calls, we presume the phone calls support the decision of the district court. *See Cuzze*, 123 Nev. at 603, 172 P.3d, at 135; NRAP 30(b)(3); *Greene*, 96 Nev. at 558, 612 P.2d at 688. We conclude Cobian failed to demonstrate counsel's performance was deficient or resulting prejudice. Therefore, he failed to demonstrate his plea was not

knowingly and voluntarily entered, and we conclude that the district court did not err by denying this claim.

Next, Cobian argues the district court erred by denying his claim that counsel was ineffective at sentencing. 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*, 466 U.S. at 687-88; *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*); see also *Gonzales v. State*, 137 Nev. 398, 404, 492 P.3d 556, 562 (2021) (applying the same test to claims alleging ineffective assistance of counsel at sentencing following a guilty plea). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 687.

Cobian argued counsel was ineffective for failing to timely file presentence motions which caused the sentencing court to have animosity toward Cobian at sentencing. The sentencing court ordered Cobian to file his presentence motions by July 29, 2022, after having been granted two previous continuances. Cobian filed his presentence motions in late August and early September. The sentencing court issued a minute order allowing the sentencing memorandum to be filed to avoid later claims of ineffective assistance of counsel but struck Cobian's two motions to exclude portions of the State's sentencing memorandum. The sentencing court noted counsel's claim that he could not file the motions earlier because he was out of town the entire month of August was not a proper excuse because the motions were due prior to August and because the sentencing court judge had seen counsel in court during August. Cobian alleged these statements by the


sentencing court likely led to animosity toward him at sentencing and resulted in his prison term.


The district court found Cobian failed to demonstrate the sentencing court had animosity toward Cobian based on counsel's behavior. Instead, the district court found the sentencing court based its sentence on the facts of the case. The record supports the finding of the district court. The sentencing court noted the complexities of the case, including the defendant's age, but found the facts of the case, the harm to the victims, and the psychosexual evaluation's reference to Cobian's callousness justified a prison sentence. The district court found that the psychosexual evaluation's reference to Cobian's callousness was supported by his behavior toward one of the victims after the sexual encounter. Further, the district court never mentioned the stricken motions or counsel's failure to timely file them at the sentencing hearing. Therefore, Cobian failed to demonstrate a reasonable probability of a different outcome at sentencing, and we conclude the district court did not err by denying this claim.


Cobian also argued counsel's failure to timely file the motions to exclude prejudiced him at sentencing because the sentencing court considered information that should have been excluded. The district court found Cobian failed to demonstrate that any of the information complained of should have been excluded at sentencing or that Cobian was prejudiced by the information being considered at sentencing. The motions to exclude appear to have been in response to the State's sentencing memorandum. Cobian failed to provide this court with copies of the State's sentencing memorandum or the motions to exclude. It also appears that the State filed oppositions to his motions to exclude and those were also not included in the record on appeal. Because the necessary documents to review this claim

were not included on appeal, we presume the documents support the findings of the district court. *Cuzze*, 123 Nev. at 603, 172 P.3d, at 135 (2007); NRAP 30(b)(3); *Greene*, 96 Nev. at 558, 612 P.2d at 688. Therefore, we conclude Cobian failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel timely filed the motions. Thus, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 14
Christopher L. Grasso, P.C.
Law Office of Gabriel L. Grasso, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk