


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SEONG MO LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88397-COA

FILED

APR 23 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Seong Mo Lee appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on August 17, 2016, and supplemental pleadings. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Lee was driving a vehicle that was involved in a two car, roll-over collision in which the driver and passenger of the other vehicle were killed. The accident occurred at approximately 1:33 a.m. Upon initial questioning, a police officer smelled alcohol emanating from Lee and noticed Lee was slurring his speech. During this questioning, Lee admitted that he had drunk six or seven beers at local restaurants. Lee was arrested after failing field sobriety tests, and subsequent blood draws and analyses revealed a blood-alcohol concentration (BAC) of 0.169 at 3:15 a.m., 0.154 at 4:13 a.m., and 0.143 at 5:15 a.m. Lee was subsequently convicted, pursuant to a guilty plea, of two counts of driving and/or being in actual physical control of a motor vehicle while under the influence of an intoxicating liquor or alcohol resulting in death. Lee then filed the instant postconviction petition for a writ of habeas corpus, which the district court denied after conducting an evidentiary hearing.

25-18082

On appeal, Lee argues the district court erred by denying his claim that he should be entitled to withdraw his plea due to the ineffective assistance of counsel. A district court may permit a petitioner to withdraw their guilty plea after sentencing where necessary “[t]o correct manifest injustice.” NRS 176.165; see *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014) (stating NRS 176.165 “sets forth the standard for reviewing a post-conviction claim challenging the validity of a guilty plea”). “A guilty plea entered on advice of counsel may be rendered invalid by showing a manifest injustice through ineffective assistance of counsel.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228 (2008). “[T]his court will not overturn the district court’s determination on manifest injustice absent a clear showing of an abuse of discretion.” *Id.* at 1039, 194 P.3d at 1229 (internal quotation marks omitted).

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 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), 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, Lee contended counsel was ineffective for “failing to investigate and challenge the accuracy of the blood-alcohol testing performed on [him].” Lee did not allege that the aforementioned test results were inaccurate; rather, Lee challenged the State’s use of retrograde-extrapolation and alleged his blood tests could not reliably show his BAC or level of impairment at the time of the accident.¹

The district court found that counsel strategically chose not to pursue such a challenge. The district court’s finding is supported by substantial evidence. At the evidentiary hearing, counsel testified she did not think she could credibly challenge the State’s calculation of Lee’s BAC at the time of the accident because three blood samples had been taken. Instead, counsel sought to suppress the blood-alcohol testing because counsel believed suppressing the blood-alcohol testing “would’ve been highly significant; much more significant than hypotheticals about body weight and eating food and things of that nature.” Counsel further testified that, although she did not consult with an expert to determine whether Lee’s BAC may have been lower at the time of the accident, she did consult with an attorney who she believed had “the most experience in Nevada with DUI cases like this.”²

¹“Retrograde extrapolation is a mathematical calculation used to estimate a person’s blood alcohol level at a particular point in time by working backward from the time the blood [sample] was taken.” *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal quotation marks omitted).

²Counsel testified that she hired the experienced attorney to “go through the file with [her] and make sure [she] wasn’t missing any points – defense points,” and that everything she did was consistent with what she had learned from the experienced attorney “after attending his CLE and discussing the case file with him.”

An attorney need only “make a reasonable investigation in preparation for trial, or a reasonable decision not to investigate.” *Kirksey*, 112 Nev. at 992, 923 P.2d at 1110. Moreover, “[t]rial counsel’s strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances.” *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted). Although a physician testified at the evidentiary hearing that Lee’s BAC may have been lower than 0.08 at the time of the accident, Lee failed to demonstrate extraordinary circumstances warranting a challenge to counsel’s strategic decision. Thus, Lee failed to demonstrate counsel was deficient in failing to challenge the State’s calculation of his BAC at the time of the accident.

Moreover, the State charged Lee under all three alternative theories of liability under NRS 484C.110(1): (1) driving while “under the influence of intoxicating liquor,” (2) driving while having a BAC of 0.08 or more, and (3) having a BAC of 0.08 or more within two hours after driving. Evidence indicating Lee may not have had a BAC of more than 0.08 at the time of the accident only implicates the second of these theories; Lee did not dispute that he exhibited several signs of impairment after the accident or that he had a BAC of 0.169 within two hours after driving. Therefore, Lee also failed to demonstrate a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel’s errors. *See Hill*, 474 U.S. at 59 (stating that, in guilty plea cases, whether a defendant is prejudiced by counsel’s failure to investigate potentially exculpatory evidence “will depend on the likelihood that discovery of the evidence would have led counsel to change [her] recommendation as to the plea,” which itself will depend on “whether the evidence likely would have changed the outcome of a trial”).

Second, Lee contended counsel was ineffective for failing to investigate the other driver's marijuana intoxication and for failing to effectively communicate how such evidence could have been used in his defense.

The district court found that Lee was the proximate cause of the accident and that counsel strategically chose not to pursue a theory that attacked the victim. The district court's findings are supported by substantial evidence. Counsel testified she was aware of a toxicology report indicating the victim had 5.3 ng/mL of a marijuana metabolite in her system and counsel considered arguing the victim's impairment caused the accident. Ultimately, counsel decided against pursuing such a strategy for two reasons: (1) after investigating, she determined Lee was the proximate cause of the accident and the victim's marijuana use was not a contributing factor; and (2) she believed arguing such a defense would have a negative impact on the jury. Counsel testified that she ruled out the possibility that the victim had caused the accident after hiring an expert "to look at the sequencing of the traffic lights to see if . . . the driver ran or proceeded before the left-hand turn signal turned green"; that witnesses had reported Lee ran a red light and that he was driving "well over" 100 mph; and that blaming the victim would "weigh[] heavily against Mr. Lee's best interest." Counsel also testified that she did not believe using the toxicology report would be favorable to Lee and that she believed she had discussed the toxicology report with Lee.

Lee failed to demonstrate extraordinary circumstances warranting a challenge to counsel's strategic decision not to pursue a defense theory that attacked the victim. *See Lara*, 120 Nev. at 180, 87 P.3d at 530. Thus, Lee failed to demonstrate counsel was deficient or a

reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's errors.

Third, Lee contended counsel was ineffective for failing to use a certified Korean language interpreter when discussing legal processes and the plea agreement with him. The district court found Lee understood the proceedings and plea agreement. In particular, the district court found that (1) there was no indication during the plea canvass that Lee did not understand the proceedings or what he was pleading to; (2) Lee affirmed during the plea canvass that he was able to read, write, and understand the English language; and (3) Lee filed numerous pleadings that demonstrated a strong grasp of legal proceedings. The district court's findings are supported by substantial evidence.³

Moreover, during the plea canvass, Lee stated that he had read and understood the charges in the information and the entirety of the guilty plea agreement and that he had no questions for the court or counsel before the court accepted his plea. Counsel also testified that she had communicated with Lee numerous times, that Lee had no difficulty speaking English, and that she did not recall Lee asking for an interpreter prior to sentencing or entry of the plea. Therefore, Lee failed to demonstrate counsel was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's errors.

Fourth, Lee contended counsel was ineffective for telling him his father believed he should sign the plea agreement, which was not true. Lee contended counsel lied to him to get him to sign the plea agreement.

³We note that Lee filed his initial petition and his pro se supplements in 2016, the same year he entered his guilty plea.

Lee's father did not testify at the evidentiary hearing.⁴ Moreover, the district court found that counsel could not recall when she spoke with Lee's father but did recall Lee's father being very supportive of Lee. The district court's findings are supported by substantial evidence. Counsel testified that she did not remember telling Lee his father wanted him to accept the plea agreement and that her best recollection was Lee's father "was very supportive of [Lee]; that he understood the gravity of the situation in which his son found himself." Although Lee testified that counsel told him his father wanted him to accept the plea deal, the district court implicitly found counsel's testimony credible, and this court will not "evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Thus, Lee failed to demonstrate by a preponderance of the evidence that counsel lied to him about his father's views regarding the plea agreement. Therefore, Lee failed to demonstrate counsel was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's errors.

Fifth, Lee contended counsel was ineffective for telling him that, if he elected to go to trial, he would be convicted "no matter what" and that he would receive the maximum sentence. Even assuming Lee's allegations are true,⁵ Lee failed to demonstrate that such advice was

⁴Lee attached a letter from his father as an exhibit to his second supplement filed on September 16, 2016, indicating his father was willing to testify on the matter.

⁵The district court did not issue specific findings of fact or conclusions of law with respect to this claim. Although this failure constitutes error, see NRS 34.830(1), for the reasons discussed, the district court's error did not hinder our ability to review the denial of Lee's petition, see NRS 178.598

objectively unreasonable in this case. *See Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to their client). Therefore, Lee failed to demonstrate counsel was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial but for counsel's errors.

Sixth, Lee contended counsel was ineffective for failing to file, or to discuss the possibility of filing, a petition for a writ of mandamus challenging the denial of his motion to suppress. Even assuming Lee's allegations are true,⁶ Lee failed to demonstrate that such a petition would have been considered, let alone granted. *See Cote H. v. Eighth Jud. Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008) (stating a writ of mandamus is an extraordinary remedy and, thus, the appellate courts have "complete discretion to determine whether to consider" a mandamus petition); *see also Williams v. Eighth Jud. Dist. Ct.*, 127 Nev. 518, 525, 262 P.3d 360, 365 (2011) (emphasizing that the appellate courts will generally "not consider writ petitions challenging evidentiary rulings, as those rulings are discretionary and there typically is an adequate remedy in the form of an appeal following an adverse final judgment"). Therefore, Lee failed to demonstrate counsel was deficient or a reasonable probability he would not

("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

⁶The district court also erred by failing to issue specific findings of fact or conclusions of law with respect to this claim. Nonetheless, the district court's error did not hinder our ability to review the denial of Lee's petition. *See* NRS 178.598.


have pleaded guilty and would have insisted on going to trial but for counsel's errors.

For the foregoing reasons, Lee failed to demonstrate counsel was ineffective. Thus, he necessarily failed to demonstrate withdrawal of his plea was necessary to correct a manifest injustice through the ineffective assistance of counsel. Therefore, we conclude the district court did not abuse its discretion in determining that Lee was not entitled to withdraw his guilty plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Gaffney Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk