IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANNELIESE MEYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88272-COA

ORDER OF AFFIRMANCE

Anneliese Meyer appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on June 23, 2023. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Meyer argues the district court erred by denying her claim that her plea was not knowingly and voluntarily entered based on ineffective assistance of counsel. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367. When raising a postconviction claim challenging the validity of a guilty plea, the petitioner must demonstrate a manifest injustice. *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. Manifest injustice may also be demonstrated by a failure to adequately inform a defendant of the consequences of his plea." *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008) (footnote and internal quotation marks omitted).

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, Meyer claimed her plea was not knowing and voluntary because counsel was ineffective for failing to discuss her possible defenses or the weaknesses with the State's evidence. Specifically, Meyer claimed

and testified at the evidentiary hearing that counsel did not discuss the bite mark evidence with her,[1] nor did counsel inform Meyer that her codefendant had admitted to causing the fractures to the child.

At the evidentiary hearing, counsel testified that her practice was to discuss possible defenses and the state of the evidence with her clients and she believed she did that in Meyer's case. Further, counsel testified that her advice to plead guilty was based on the fact that, even if Meyer was not the person who caused the injuries, she was nevertheless criminally liable because she failed to seek medical attention for the injuries. The district court found that Meyer's claim, and her testimony at the evidentiary hearing, was contradicted by Meyer's acknowledgement in the plea agreement that she had discussed possible defenses with counsel prior to entering her plea. Further, the district court found that Meyer failed to demonstrate she was prejudiced by counsel's performance because Meyer was charged with both child abuse and neglect, which meant that Meyer could have been convicted even if she did not cause the bite marks or the fractures. The record supports the findings of the district court. Thus, Meyer failed to demonstrate counsel's performance was deficient or a reasonable probability that Meyer would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude the district court did not err by denying this claim.

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[1]The bite mark evidence excluded Meyer's codefendant and another adult that had access to the child as having caused the bite marks. The evidence was inconclusive as to Meyer. Meyer stated in her petition that the bite mark evidence would not have been admissible at trial because of "the judicially recognized unreliability of bite mark science." However, Meyer did not support this claim with any citation to caselaw nor did she present an expert at the evidentiary hearing. Thus, she failed to demonstrate the bite mark evidence would not have been admissible.

Second, Meyer claimed her plea was not knowing and voluntary because counsel was ineffective for guaranteeing that she would get probation based on her lack of criminal history. Counsel testified she did not promise Meyer probation but explained Meyer was a candidate for probation given her lack of criminal history. Counsel also informed Meyer she would have to be a low risk to reoffend to get probation. Meyer testified she believed she was promised probation based on her lack of criminal history. The district court found that the guilty plea agreement did not promise Meyer probation and that counsel's testimony about not promising Meyer probation was credible. The record supports the findings of the district court. Further, the "mere subjective belief of a defendant as to potential sentence, or hope of leniency, unsupported by any promise from the State or indication by the court, is insufficient to invalidate a guilty plea as involuntary or unknowing." *Rouse v. State*, 91 Nev. 677, 679, 541 P.2d 643, 644 (1975). Thus, Meyer failed to demonstrate counsel's performance was deficient or a reasonable probability that Meyer would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude the district court did not err by denying this claim.

Third, Meyer claimed her plea was not knowing and voluntary because counsel was ineffective for failing to inform her that her parental rights would likely be terminated if she pleaded guilty to the child abuse charge. Generally, "[a] defendant's awareness of a collateral consequence is not a prerequisite to a valid plea and, consequently, may not be the basis for vitiating it." *See Palmer v. State*, 118 Nev. 823, 826, 59 P.3d 1192, 1194 (2002); *but see Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (clarifying that a failure to advise a defendant that his plea of guilty made him subject to automatic deportation was ineffective assistance of counsel). Unlike direct

consequences, which "have a definite, immediate and largely automatic effect on the range of the defendant's punishment," collateral consequences "do not affect the length or nature of the punishment and are generally dependent on either the court's discretion, the defendant's future conduct, or the discretion of a government agency." *Nollette v. State*, 118 Nev. 341, 344, 46 P.3d 87, 89 (2002) (internal quotation marks omitted).

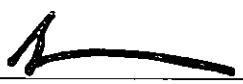
Here, the potential termination of Meyer's parental rights would not automatically and immediately impact the range of punishment she would serve, and such termination would not be a form of punishment imposed by the sentencing court but would be the result of an action taken by a government agency or private entity, would be unrelated to Meyer's sentence in this matter, and would be personal to Meyer's circumstances. *Cf. id.* at 348, 46 P.3d at 92 ("Indeed, like other collateral consequences, the revocation of a professional license or the termination of employment is the result of an action taken by a government agency or private entity. Such a consequence is unrelated to the defendant's sentence and personal to the circumstances of each defendant."). Thus, the potential termination of Meyer's parental rights would be a collateral consequence of the guilty plea and counsel was not required to inform Meyer about this issue. Further, Meyer does not demonstrate counsel affirmatively misrepresented the collateral consequences of her plea. *See Rubio*, 124 Nev. at 1043, 194 P.3d at 1232. We note counsel testified that Meyer asked about this issue and counsel referred Meyer to her family law attorney. Based on the above, Meyer failed to demonstrate counsel's performance was deficient. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Meyer argues her plea was not knowing and voluntary because counsel was ineffective for failing to communicate with her. She argued that counsel only went over the plea agreement with her once, for about seven minutes prior to the change of plea hearing. She also said she had difficulty getting ahold of counsel outside of court dates. Counsel testified she had a video visit with Meyer, spoke with Meyer several times, and spoke with her mother. She also testified it was her practice to go over a plea agreement line by line with her clients prior to the client pleading guilty. Counsel further testified that on the day of the change of plea hearing, she went over the agreement with Meyer again and answered any questions Meyer had. The district court found that the level of communication Meyer received was objectively reasonable and that Meyer failed to demonstrate she was prejudiced. The record supports the decision of the district court. Thus, Meyer failed to demonstrate counsel's performance was deficient or a reasonable probability she would not have pleaded guilty and would have insisted on going to trial. Therefore, we conclude the district court did not err by denying this claim.

Finally, Meyer argues the district court erred by denying her claim that counsel was ineffective at sentencing for failing to file a sentencing memorandum or present mitigating evidence. Meyer's bare claim failed to allege what should have been contained in a sentencing memorandum or what mitigating evidence should have been presented at sentencing. *See Chappell v. State*, 137 Nev. 780, 788, 501 P.3d 935, 950 (2021) (providing that "a petitioner must do more than baldly assert that his attorney could have, or should have, acted differently" but must instead "specifically explain how his attorney's performance was objectively unreasonable" (quotation marks omitted)). Further, Meyer did not provide

this court with a copy of the sentencing hearing transcript. "The burden to make a proper appellate record rests on appellant." *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980); *see also* NRAP 30(b)(3). Thus, Meyer failed to demonstrate counsel's performance was deficient or a reasonable probability of a different outcome at sentencing had counsel filed a sentencing memorandum or introduced mitigating evidence. Therefore, we conclude that the district court did not err by denying this claim.

Having concluded that Meyer is not entitled to relief, we ORDER the judgment of the district court AFFIRMED.



_____, C.J.
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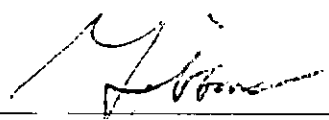

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Erika D. Ballou, District Judge
Liberators Criminal Defense
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk