

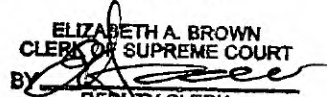
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRENDA YAMILETH GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86620-COA

FILED

MAY 08 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Brenda Yamileth Garcia appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 17, 2021, and a supplemental petition filed on September 28, 2022. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Garcia argues the district court erred by denying her claims that counsel were ineffective.<sup>1</sup> 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

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<sup>1</sup>Garcia was represented by three different counsel during the pendency of her case.

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, Garcia claimed that plea counsel was ineffective for failing to investigate a possible alternative suspect. Garcia claimed that this other person knew Garcia, had turned off his GPS during the time of the murder and disposing of the body, and had a criminal past. After holding an evidentiary hearing, the district court found that counsel did investigate this lead and that it would not have resulted in a reasonable probability of a different outcome because even if this other person were involved, it would not have absolved Garcia of the charges. The record supports the findings of the district court. At the evidentiary hearing, counsel testified that she had her investigator look into the alternative suspect. Counsel also testified that because Garcia was charged as a coconspirator, the fact that someone else may have also been involved did not negate Garcia's criminal liability. Further, Garcia did not testify that she would have insisted on going to trial had counsel investigated the alternative suspect. Instead, she testified that she wanted counsel to continue fighting and negotiating. Therefore, Garcia failed to demonstrate that counsel's performance was deficient or a reasonable probability she would have insisted on going to trial, and we conclude that the district court did not err by denying this claim.

Second, Garcia claimed that pre-plea counsel was ineffective for failing to present additional testimony regarding her posttraumatic stress

disorder (PTSD) in support of a motion to suppress her statement to police. Garcia claimed that had counsel presented this information, the result of the hearing would have been different and she could have received a lower sentence. Garcia did not allege that counsel's failure affected the validity of her guilty plea or that her plea was entered without the effective assistance of counsel. This claim was thus outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus arising from a guilty plea. See NRS 34.810(1)(a); *Gonzales v. State*, 137 Nev. 398, 403, 492 P.3d 556, 562 (2021). Therefore, we conclude that the district court did not err by denying this claim.

Third, Garcia claimed that pre-plea and plea counsel were ineffective for failing to retain an expert on PTSD to support a defense that she lacked the specific intent to commit murder. Garcia claimed that her PTSD could have been used to show that she lacked the intent to kill her mother. The district court found that Garcia failed to show how her PTSD could have affected her intent and that Garcia told counsel she wanted to negotiate her case rather than go to trial. The record supports the finding of the district court. Garcia retained a neuropsychologist who prepared a report and testified at the evidentiary hearing. Neither the prepared report nor the neuropsychologist's testimony explained how Garcia's PTSD could have affected her intent to commit murder. And Garcia neither alleged in her petition nor testified at the evidentiary hearing as to how her PTSD affected her decision-making with respect to the crimes. Finally, Garcia and counsel both testified that Garcia wanted to negotiate her case. Therefore, she failed to prove the facts underlying this claim by a preponderance of the evidence. Garcia thus failed to demonstrate counsel's performance was deficient or a reasonable probability of a different

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

Finally, Garcia claimed that counsel was ineffective for failing to file a presentence motion to withdraw her guilty plea. Prior to sentencing, Garcia's plea counsel withdrew based on Garcia's intent to file a motion to withdraw her guilty plea. The district court granted counsel's motion to withdraw as counsel and appointed new counsel to determine whether Garcia had grounds to file a motion to withdraw her guilty plea. New counsel determined there were no legal grounds to file a motion to withdraw the guilty plea, and the case proceeded to sentencing. The district court determined that counsel's failure to file the motion to withdraw the guilty plea was deficient but concluded that Garcia failed to demonstrate a reasonable probability that a motion to withdraw the guilty plea would have been successful. We agree.

In her petition, Garcia claimed that counsel should have claimed that her plea should be withdrawn because she has PTSD and, therefore, her plea was not knowingly, voluntarily, and intelligently entered. The district court found that she did not present a fair and just reason to withdraw her plea because she failed to demonstrate that her PTSD caused her plea to not be knowingly, voluntarily, and intelligently entered. *See Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015) (holding that "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just"). The record supports the findings of the district court. At the evidentiary hearing, Garcia stated she understood her plea and did not feel any effects from her PTSD at that time. Further, the neuropsychologist testified that she did not review the transcript of the

change of plea hearing and could not specifically say that Garcia's PTSD affected her ability to understand her plea. Garcia thus failed to prove the facts underlying this claim by a preponderance of the evidence. Therefore, we conclude the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michelle Leavitt, District Judge  
Law Office of Jeannie Hua  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk