IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLENE SNYDER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53228

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying appellant's supplemental post-conviction petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant challenges the district court's denial of her claim of ineffective assistance of counsel on the ground that her trial counsel should have thoroughly investigated all potential defenses prior to advising her to plead guilty to second-degree murder.[1] Counsel is ineffective when his performance is deficient and that deficiency prejudices the defendant. Strickland v. Washington, 466 U.S. 668, 687 (1984). Counsel's performance is deficient when it falls below an objective standard of reasonableness. Id. at 687-88. Where an appellant has pleaded guilty, she establishes prejudice when she demonstrates "a

[1]Appellant also challenged the district court's denial as to her claims regarding whether trial counsel should have requested a competency evaluation or taken steps to mitigate pretrial publicity. In light of our order reversing the district court's decision on other grounds, we need not address these claims.

reasonable probability that, but for counsel's errors, [she] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996).

Appellant argues that given her extensive history of mental health problems, trial counsel should have requested a psychiatric evaluation to determine whether she had any defenses to the crimes charged. In denying appellant's claim, the district court summarily concluded that trial counsel's knowledge of appellant's background at the time he counselled her to plead guilty indicated sufficient investigation. The correct analysis, however, is not what trial counsel knew, but rather, whether given what trial counsel knew, a reasonable attorney would have investigated further. Wiggins v. Smith, 539 U.S. 510, 527 (2003). In the case at bar, the analysis must focus on whether a reasonable attorney would have first requested a psychiatric evaluation before counselling appellant to plead guilty.

The need for a psychiatric evaluation may be triggered by "past institutionalization or highly unusual behavior." Hensley v. Crist, 67 F.3d 181, 186 (9th Cir. 1995). Further, trial counsel is unreasonable where he has knowledge of a defendant's mental health problems, prior hospitalization and suicidal thoughts but does not investigate to learn the entire truth. Evans v. Lewis, 855 P.2d 631, 636-37 (9th Cir. 1988). Here, at the time he presented the plea agreement to appellant, trial counsel was aware that she had a significant history of mental health problems, including a previous institutionalization, antidepressant prescriptions, and recent suicide attempts. Trial counsel also had reviewed most, but not necessarily all, of appellant's records that his office had, and so would

have been aware of the highly unusual behavior she exhibited in allowing her home to, in effect, become a cesspool. In light of trial counsel's knowledge, he was unreasonable in failing to request a psychiatric evaluation prior to counselling appellant to plead guilty.

Additional factors further support that trial counsel was deficient. The strong presumption that trial counsel was not deficient may be overcome by showing that trial counsel's decision could not have been a sound trial strategy. Evans, 855 P.2d at 636. Strategic choices made after an abbreviated investigation are reasonable only insofar as the decision to end the investigation was based on reasonable professional judgment. Strickland, 466 U.S. at 690-91. Where mental health problems are indicated and point to the only possible defense, it is unreasonable not to investigate them fully and to instead rely on trial counsel's own judgment. Dumas v. State, 111 Nev. 1270, 1272, 903 P.2d 816, 817 (1995).

Here, trial counsel's failure to request the psychiatric evaluation could not have been a strategic choice. First, trial counsel testified that he did not order the evaluation because he believed that appellant was competent. However, the standard for competency is not the same as that for insanity, nor is it relevant to appellant's state of mind when her daughter died. Second, a psychiatric evaluation may have supported her only line of defense. As there is no dispute in the record of the underlying facts, appellant's only apparent defenses would be insanity or that she lacked the requisite state of mind.[2] Finally, we can conceive of

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[2]The State correctly points out that Nevada does not recognize the technical defense of diminished capacity. See Crawford v. State, 121 Nev. 744, 758, 121 P.3d 582, 591 (2005). However, as a matter of due process, a

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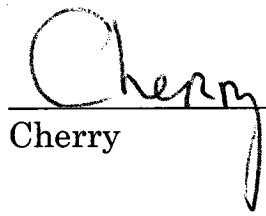
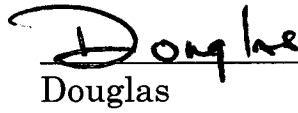
no possible tactical advantage in not requesting the psychiatric evaluation.

Not only has appellant demonstrated that trial counsel was deficient in failing to fully investigate her defenses prior to advising her to plead guilty, but based on the record before us, we conclude that appellant has demonstrated prejudice as a result of that deficiency. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



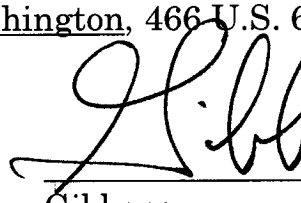
_____, J.
Cherry



_____, J.
Douglas

GIBBONS, J., dissenting:

I dissent because I conclude that appellant has not met her burden under Strickland v. Washington, 466 U.S. 668 (1984).



_____, J.
Gibbons

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defendant may introduce evidence, including psychiatric evidence, that she lacked the requisite state of mind to commit a particular crime. Fox v. State, 73 Nev. 241, 246, 316 P.2d 924, 927 (1957); Finger v. State, 117 Nev. 548, 577, 27 P.3d 66, 85 (2001).

cc: Hon. David Wall, District Judge
Hon. Kenneth C. Cory, District Judge
Terrence M. Jackson
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk