

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAULINE BEAGLEY KRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54808

FILED

JUN 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying appellant Pauline Beagley Krell's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Krell contends that the district court abused its discretion by dismissing her petition without providing her with an opportunity to litigate her claims. This contention is repelled by the record. The district court conducted an evidentiary hearing during which Krell had a full and fair opportunity to prove all of her claims. The district court subsequently denied the petition on the merits.

Krell also contends that the district court erred by denying her claims that trial counsel was ineffective for (1) allowing her to proceed to trial on a plea of not guilty instead of entering a plea of guilty but mentally ill, (2) failing to offer a theory-of-defense instruction, (3) not seeking a mistrial due to prosecutorial misconduct, and (4) failing to challenge both her 2003 felony DUI conviction and the 2005 amendment to NRS 484.3792, which provided that all subsequent convictions would be felonies. Krell further contended that appellate counsel was ineffective for

failing to seek review of the prosecutorial misconduct and the alleged ex post facto violation arising from the 2005 amendment to NRS 484.3792.

When reviewing the district court's resolution of ineffective-assistance claims, we give deference to the court's factual findings if they are 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).

The district court found that neither trial nor appellate counsel were ineffective because (1) the statutory right to plead guilty but mental ill did not exist at the time of Krell's trial; (2) trial counsel thoroughly explored and argued the theory of defense at trial and "testified credibly that she saw no need for additional instructions;" (3) trial counsel objected and obtained rulings on the instances of prosecutorial misconduct and "testified credibly that she did not seek a mistrial because she was satisfied with the progress of the trial and had high hopes of an acquittal," and appellate counsel testified credibly that she reviewed the entire record, noted the misconduct, and "made a tactical decision to focus her attention on the mens rea and theory of defense;" and (4) Krell's challenges the 2003 felony DUI conviction and the 2005 amendment to NRS 484.3792 were without merit because the district court was not required to inform her of collateral consequences before accepting her guilty plea in 2003, and the 2005 amendment to NRS 484.3792 is not an ex post facto law simply because Krell's earlier conviction antedated its enactment. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing two-part test for ineffective assistance of counsel); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996) (applying the Strickland test to ineffective assistance of appellate

counsel claims); Ford v. State, 105 Nev.850, 853, 784 P.2d 951, 953 (1989) (“[t]actical decisions are virtually unchallengeable”); Dixon v. State, 103 Nev. 272, 274 & n.2, 737 P.2d 1162, 1164 & n.2 (1987).

The district court’s factual findings are supported by substantial evidence and are not clearly wrong, and Krell has not demonstrated that the district court erred as a matter of law. Accordingly, we conclude that the district court did not err by denying Krell’s ineffective-assistance claims.

Having considered Krell’s contentions and concluded that she is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Connie J. Steinheimer, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk