IN THE SUPREME COURT OF THE STATE OF NEVADA

SOLOMON MICHAEL BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57225

ORDER OF REVERSAL AND REMAND

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; David B. Barker, Judge. Appellant Solomon Michael Brooks raises two issues on appeal.

First, Brooks claims that his counsel was ineffective for failing to fully investigate the facts of his case before advising Brooks not to withdraw his guilty plea and not challenging the underlying facts at sentencing. This claim was raised in a supplemental petition before an evidentiary hearing and the State replied. See Barnhart v. State, 122 Nev. 301, 303, 130 P.3d 650, 652 (2006) (explaining that the district court may allow a petitioner to raise new issues at an evidentiary hearing but should not resolve those issues without allowing the State to respond). To establish a claim of ineffective assistance of counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness and that it resulted in prejudice such that there is a reasonable probability that but for counsel's errors, the outcome of the proceedings would be different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

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Although counsel did not have the entire file before sentencing, we conclude that he was not deficient for advising his client not to withdraw his guilty plea. Brooks was not eligible for probation under the original charges and he admits that his "goal from the outset . . . was to obtain a probation sentence." Nor was counsel deficient for advising his client not to challenge the evidence against him at sentencing. Counsel's strategic decision to focus on Brooks' good character and remorse rather than the quality of the evidence does not fall below an objective standard of reasonableness. Even if counsel had advised Brooks to address the quality of the evidence, we do not conclude that there is a reasonable probability that Brooks' sentence would have been different.

Second, Brooks claims that his counsel was ineffective for failing to file an appeal. According to the district court's findings of fact, Brooks' counsel was aware of his client's dissatisfaction with his sentence but failed to file an appeal on his behalf. We give deference to the district court's factual findings regarding ineffective assistance of counsel 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). "[A]n attorney has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction." E.g., Lozada v. State, 110 Nev. 349, 354, 871 P.2d 944, 947 (1994); Means v. State, 120 Nev. 1001, 1015, 103 P.3d 25, 34 (2004). Because counsel failed to file an appeal after learning of his client's dissatisfaction, his performance fell below an objective standard of reasonableness and was therefore deficient. See Strickland, 466 U.S. at 687-88; see also Mann v. State, 118 Nev. 351, 353, 46 P.3d 1228, 1229 (2002) (explaining that prejudice is presumed when counsel's conduct denies a convicted

defendant an appeal). Therefore, we reverse the district court's order and remand this matter to the district court with instructions to apply the remedy set forth in NRAP 4(c). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order. [1]

_____, J.
Pickering

_____, Sr.J.
Rose

_____, Sr.J.
Shearing

cc: Hon. David B. Barker, District Judge
        Law Offices of Martin Hart, LLC
        Attorney General/Carson City
        Clark County District Attorney
        Eighth District Court Clerk

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[1]The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.