IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY COOKS A/K/A BILLY JAMES COOKS, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58436

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying appellant Billy Cooks' post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Cooks contends that the district court erred by denying his claim that trial counsel was ineffective for failing to advise him that, due to a change in the law after entry of his guilty plea, he would be required to register as a sex offender "rather than a person convicted of a crime against a child." Cooks alleges that he was advised that, unlike a conviction for a sex offense, a conviction for a crime against a child would not subject him to community notification. When reviewing the district court's resolution of an ineffective assistance claim, we give deference to the 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).

The district court determined, without conducting an evidentiary hearing, that Cooks' counsel was not deficient and denied the

petition.[1] 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, 987-88, 923 P.2d 1102, 1107 (1996) (applying Strickland test to judgments of conviction based on guilty pleas). However, at the time counsel allegedly advised Cooks that conviction as an "offender" would not subject him to community notification,[2] NRS 179D.475—providing that "offenders" as well as "sex offenders" would be subject to community notification—had already been enacted and had an effective date of July 1, 2008. 2007 Nev. Stat., ch. 485, § 29, at 2762; 2007 Nev. Stat., ch. 485, § 57, at 2780; see also 2007 Nev. Stat., ch. 485, §§ 27, at 2761; 28, at 2761; 39 at 2767-69; and 40, at 2769-70. And NRS 179D.730, requiring community notification of "sex offenders" but not "offenders," had been repealed and would be effective for only a few more months. 2007 Nev. Stat., ch. 485, §§ 56-57, at 2780. Under these circumstances, we conclude that it would have been objectively unreasonable for counsel to advise Cooks that he would not be subject to community notification if he pleaded guilty to an offense requiring registration as an "offender." See Rubio v. State, 124 Nev. 1032, 1043, 194

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[1]The district court also denied Cooks' claim because it was belied by the record and barred by the law of the case doctrine. The district court improperly rejected Cooks' ineffective assistance of counsel claim as belied by the record based on the State's representation that he was entitled to the benefit of the statute in effect at the time of his offense. See NRS 179D.0559(1) (providing for retroactive application). The district court also erred by denying Cooks' claim based on the law of the case doctrine, see Hall v. State, 91 Nev. 314, 315, 535 P.2d 797, 798 (1975), because this court did not address an ineffective assistance claim on direct appeal and, generally, refuses to do so, see Johnson v. State, 117 Nev. 153, 160-61, 17 P.3d 1008, 1013 (2001).

[2]Cooks entered his guilty plea on February 11, 2008.

P.3d 1224, 1231-32 (2008) (adopting the affirmative misrepresentation exception to the rule that counsel is not deficient for failing to advise defendants about the collateral consequences of guilty pleas). Thus, if the allegations in the petition are true, counsel's misadvisement constituted deficient performance. See Strickland, 466 U.S. at 687-88. And Cooks alleged in his petition that he would not have pleaded guilty if he had known that he would be subject to the requirements of a person convicted of sex offense. Thus, Cooks' petition raised a claim that, if true, would entitle him to relief, and the district court erred by denying this claim without conducting an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). We reverse the denial of Cooks' petition and remand this matter for a limited evidentiary hearing to determine whether Cooks' allegations are true. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.[3]

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. James M. Bixler, District Judge
Patrick E. McDonald
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[3]In light of our disposition, we decline to address Cooks' remaining contention.