

IN THE SUPREME COURT OF THE STATE OF NEVADA

LINDA LOUISE GRIGGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60365

FILED

OCT 08 2012

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

In her petition filed on September 29, 2011, appellant claimed that she received ineffective assistance of counsel. To prove 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 resulting prejudice such that there is a reasonable probability that, but for counsel's errors, the outcome of the proceedings would have been different. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in Strickland). To prove prejudice to invalidate the decision to enter a guilty plea, a petitioner must demonstrate that there is a reasonable probability that, but for counsel's errors, petitioner

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, Strickland, 466 U.S. at 697, and the 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 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).

First, appellant claimed that trial counsel was ineffective in failing to adequately investigate appellant's claim of innocence because a suspect was never identified and there was no proof she knew the car was stolen. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Trial counsel testified that she discussed possible defenses with appellant and that she reviewed the discovery with appellant, including the police report indicating that appellant informed the police officer she figured the vehicle was "hot." Trial counsel further testified that she did not remember appellant informing her about a second person in the car, and the documents in the record do not support this assertion. Appellant received a favorable plea bargain as she avoided the possibility of habitual criminal adjudication in exchange for her guilty plea to one count of possession of a stolen vehicle. Therefore, we conclude that the district court did not err in denying this claim.

Second, appellant claimed her trial counsel was ineffective in advising her to waive her preliminary hearing because she believed that there was insufficient proof that she possessed a stolen vehicle. Appellant

failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. Appellant was personally canvassed about her waiver of the preliminary hearing. Trial counsel testified that she discussed the advantages and disadvantages of waiving the preliminary hearing. Appellant failed to demonstrate that there was a reasonable probability of a different outcome had trial counsel not advised her to waive the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

Third, appellant claimed that her trial counsel was ineffective in advising her that all the witnesses were available. Appellant reasoned that the victim was not available because he could not be contacted by the Department of Parole and Probation during the preparation of the presentence investigation report. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. The Department's inability to contact the victim during the preparation of the presentence investigation report does not equate to the victim being unavailable for trial. The record provides no indication and appellant offers no support for her assertion that the victim would not have been available. Trial counsel testified that the victim and witnesses were available at the time of the preliminary hearing. Therefore, we conclude that the district court did not err in denying this claim.

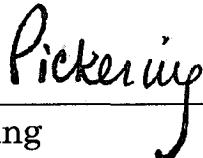
Fourth, appellant appeared to claim that trial counsel was ineffective for failing to negotiate a better plea bargain—a plea bargain to misdemeanor offenses. Appellant failed to demonstrate that her trial counsel's performance was deficient or that she was prejudiced. There is nothing in the record to indicate that a better plea bargain was available. In fact, the testimony at the evidentiary hearing indicated that the State

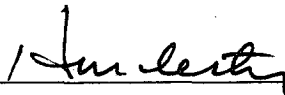
was pursuing habitual criminal adjudication from the outset. Therefore, we conclude that the district court did not err in denying this claim.

Fifth, appellant claimed that her trial counsel was ineffective for failing to argue mitigating factors in the presentence investigation report. Appellant failed to demonstrate her trial counsel's performance was deficient or that she was prejudiced. Appellant failed to identify any mitigating factors or demonstrate that further argument would have had a reasonable probability of altering the outcome at sentencing. Notably, appellant stipulated to receiving a sentence of 4 to 10 years. Therefore, we conclude that the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Saitta


_____, J.
Pickering


_____, J.
Hardesty

²We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Chief Judge, Eighth Judicial District Court
Linda Louise Griggs
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk