

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIA WARE USRY,
Appellant,
vs.
CAROLYN MILES, WARDEN; AND
THE STATE OF NEVADA,
Respondents.

No. 60941

FILED

NOV 15 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant Julia Ware Usry's post-conviction petition for a writ of habeas corpus. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge.

First, Usry claims that the district court erred by finding that she received reasonably effective assistance of counsel. When reviewing the district court's resolution of an ineffective-assistance claim, we give deference to the district court's factual findings if supported by substantial evidence and not clearly erroneous but review the district court's application of the law to those facts de novo. Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). Here, the district court held an evidentiary hearing during which Usry, her counsel, and several of Usry's family and friends testified.

Usry claims that the district court erred by denying her claim that her attorney was ineffective for failing to adequately investigate the available mental health treatment programs, thereby rendering her plea unknowing and involuntary. The district court found that counsel had successfully negotiated with the District Attorney's Office to reach a plea

agreement where both parties would recommend mental health diversion. Counsel had discussed the plea agreement with Usry and developed a mental health treatment plan that he presented to the court at sentencing. The district court considered the proposed treatment plan but felt that imprisonment was the appropriate punishment.

Next, Usry claims that the district court erred by finding that counsel effectively presented adequate mitigation evidence at sentencing. The district court explained that counsel was not deficient because he focused on Usry's lack of prior felony convictions and proposed mental health treatment plan. Additionally, the district court found that Usry suffered no prejudice because the additional mitigating evidence presented at the evidentiary hearing would not have affected the sentence. The district court concluded that counsel was not deficient because he addressed what he believed was the sentencing court's concern—Usry's criminal history.


The district court concluded that Usry failed to demonstrate that she was deprived of reasonably effective assistance of counsel. See Strickland v. Washington, 466 U.S. 668, 687 (1984) (establishing a two-part test for ineffective assistance of counsel); Hill v. Lockhart, 474 U.S. 52, 59 (1985) (applying Strickland to situations where defendant pleaded guilty); Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996) (adopting the Hill standard for prejudice where the conviction is the result of a guilty plea). Our review of the record reveals that the district court's factual findings are supported by substantial evidence and are not clearly

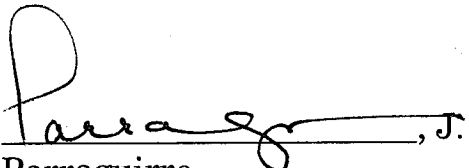
erroneous and Usry failed to demonstrate that the district court erred as a matter of law.¹

Second, Usry argues that the unavailability of mental health diversion programs in Eureka County violates the Equal Protection Clause, her sentence violates the Eighth Amendment because it is excessive, and she is actually innocent of assault with a deadly weapon. These arguments are outside the scope of permissible claims in a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based upon a guilty plea. See NRS 34.810(1)(a). Thus, we decline to address those claims.

Having concluded that Usry is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹Usry claims that her counsel was ineffective for failing to object to the trial court's recommendations of parole terms. This claim was not raised below, and Usry does not allege good cause and prejudice for failing to include this issue in her petition. See *Hill v. State*, 114 Nev. 169, 178, 953 P.2d 1077, 1084 (this court generally declines to consider issues not raised in a post-conviction petition filed in district court when no cause and prejudice is alleged for the failure to raise issues below). Accordingly, we do not address this claim.

cc: Hon. Steve L. Dobrescu, District Judge
Karla K. Butko
Attorney General/Carson City
Eureka County District Attorney
Eureka County Clerk