IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY ANNE MATTOON,
Appellant,
vs.
CAROLYN MYLES, WARDEN,
FLORENCE MCCLURE WOMEN'S
CORRECTIONAL CENTER,
Respondent.

No. 63004

FILED

DEC 23 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a district court order denying appellant Mary Anne Mattoon's post-conviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Steven P. Elliott, Senior Judge.

Validity of the guilty plea

Mattoon contends that the district court erred by denying her claim that her guilty plea was not entered knowingly and intelligently because counsel failed to explain the difference between a category B and category C felony and that she had a limited right to appeal. She also contends that her guilty plea was not entered voluntarily because counsel coerced her by telling her that the State could charge her for each act of embezzlement.

A guilty plea is presumptively valid, and "[t]his court will not invalidate a plea as long as the totality of the circumstances, as shown by the record, demonstrates that the plea was knowingly and voluntarily

made and that the defendant understood the nature of the offense and the consequences of the plea." *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). "A thorough plea canvass coupled with a detailed, consistent, written plea agreement supports a finding that the defendant entered the plea voluntarily, knowingly, and intelligently." *Crawford v. State*, 117 Nev. 718, 722, 30 P.3d 1123, 1126 (2001). We review a district court's determination regarding the validity of a plea for a clear abuse of discretion. *McConnell v. State*, 125 Nev. 243, 250, 212 P.3d 307, 312 (2009). A petitioner is entitled to an evidentiary hearing if she presents specific facts that, if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

The district court concluded that Mattoon's guilty plea was knowing, voluntary, and intelligent. We agree. The guilty plea agreement and canvass reflect that Mattoon understood the charges against her, the rights that she was waiving–including the right to appeal except in limited circumstances–and the likely consequences of her decision to plead guilty. Even if Mattoon did not grasp the full extent of the various levels of felony embezzlement and her limited right to appeal, the Constitution "permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor." *United States v. Ruiz*, 536 U.S. 622, 630 (2002); *see Brady v. United States*, 397 U.S. 742, 757 (1970) ("The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every

relevant factor entering into his decision."). Moreover, Mattoon does not allege, and did not demonstrate, that the State would have considered a plea to a category C felony. Finally, although Mattoon asserted that counsel coerced her, counsel is obligated to give his client candid advice about all possible outcomes and a defendant's plea is not rendered involuntary because she enters it to avoid the possibility of a harsher punishment. *Brady*, 397 U.S. at 751. We conclude that the district court did not abuse its discretion by denying this claim without conducting an evidentiary hearing.

Ineffective assistance of counsel

Mattoon also contends that the district court erred by denying her claims of ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, 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, she 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, 987-88, 923 P.2d 1102, 1107 (1996). Further, "a court must indulge the strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment." *Cullen v. Pinholster*, 563 U.S. ___, ___, 131 S. Ct. 1388, 1407 (2011) (internal quotation marks and brackets omitted). 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).

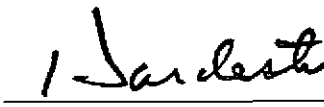
First, Mattoon contends that the district court erred by denying her claim that counsel was ineffective for failing to advise her of her right to appeal. The district court concluded that counsel was not ineffective because Mattoon failed to demonstrate a reasonable ground for appealing the judgment of conviction. We agree and conclude that the district court did not err by denying this claim without conducting an evidentiary hearing. *See Thomas v. State*, 115 Nev. 148, 150, 979 P.2d 222, 223 (1999) (identifying the circumstances in which counsel is obligated to inform his client of her right to pursue a direct appeal).

Second, Mattoon contends that the district court erred by denying her claims challenging counsel's effectiveness regarding restitution and counsel's failure to file an appeal after being specifically asked to do so without first conducting an evidentiary hearing. We agree with Mattoon's assertion that the district court's order does not sufficiently address these claims. *See* NRS 34.830(1); *Nika v. State*, 120 Nev. 600, 605-06, 97 P.3d 1140, 1144 (2004). And based on our review of the record, it appears that Mattoon alleged sufficient facts to entitle her to an evidentiary hearing. *See Hargrove*, 100 Nev. at 502, 686 P.2d at 225. We therefore reverse the denial of these claims and remand for an evidentiary hearing. We remind the district court that whether or not it

concludes relief is warranted, it must provide specific findings of fact and conclusions of law supporting its disposition of the claims.

Having concluded that Mattoon is only entitled to the relief granted herein, we

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


, J.
Hardesty


, J.
Cherry

PICKERING, C.J., concurring in part and dissenting in part:

Because Mattoon failed to sufficiently plead prejudice on her claims challenging counsel's effectiveness regarding restitution, *see Hill*, 474 U.S. at 58-59; *Kirksey*, 112 Nev. at 987-88, 923 P.2d at 1107 (a petitioner must allege that, but for counsel's errors, she would not have pleaded guilty and would have insisted on going to trial), I disagree with

[1]This order constitutes the final disposition in this appeal. Any appeal from the district court's decision below shall be docketed as a new matter.

the majority's conclusion regarding those claims, and respectfully dissent in that part only.

Pickering, C.J.
Pickering

cc: Hon. Steven P. Elliot, Senior Judge
Hon. Elliott Sattler, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk