

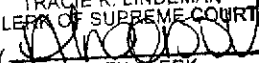
IN THE SUPREME COURT OF THE STATE OF NEVADA

MELISSA ARIAS A/K/A ELIZABETH
KAY CARLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63716

FILED

FEB 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

In her March 18, 2013, petition, appellant claimed that she received 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 her 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, petitioner 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 v.*

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).

Washington, 466 U.S. 668, 697 (1984). 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).


Appellant claimed that trial counsel was ineffective for failing to disclose the consequences of the plea, to communicate with appellant, to work with the other attorneys involved in appellant's other cases, to provide requested discovery documents, to investigate her defense, and to negotiate further with the prosecutor. Appellant failed to support these claims with specific facts that, if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Further, appellant failed to allege that absent these errors by counsel, she would not have pleaded guilty and would have insisted on going to trial. Therefore, the district court did not err in denying these claims.

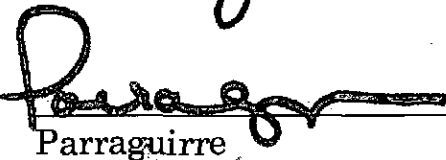
Appellant also appeared to claim that she was deprived of a direct appeal because she was not informed that she could appeal. Appellant failed to demonstrate that she was improperly deprived of a direct appeal. The duty to inform or consult with a client with respect to appealing a judgment of conviction based on guilty plea only arises "when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal." *Toston v. State*, 127 Nev. ___, ___, 267 P.3d 795, 799 (2011). Appellant was informed of the limited right to appeal in the guilty plea agreement. Further, she did not claim that she asked counsel to file an appeal and he failed to do so or that there were any circumstances


where she would have benefitted from receiving advice regarding an appeal. Therefore, the district court did not err in denying this claim.

Finally, appellant claimed that there was a due process violation, *Brady v. Maryland*, 373 U.S. 83 (1963) violations, and insufficient or unreliable evidence. These claims were outside the scope of a post-conviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. See NRS 34.810(1)(a). Further, appellant failed to present any argument in her petition regarding these claims. Therefore, the district court did not err in denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

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: Hon. James M. Bixler, District Judge
Melissa Arias
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk