

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

QUIWANECA SPIKES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66431

FILED

MAR 17 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On appeal from the denial of her January 9, 2014, petition, appellant argues that the district court did not consider the totality of the circumstances when it concluded that her guilty plea was knowingly and voluntarily entered. Appellant argues that she was not aware of the charge and of the consequences of her plea. Appellant fails to meet her burden to demonstrate that she did not enter a knowing and voluntary plea. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994).

Appellant was informed in the guilty plea agreement and at the plea canvass of the charge she faced, of the possible range of penalties, and of the rights she waived by entering a guilty plea. In addition, prior to accepting appellant's plea, the trial court answered appellant's questions



regarding the possible sentence, the *Alford*¹ plea process, and asked appellant if she understood the proceedings. Appellant responded that she did and informed the district court that she had discussed the process with her attorney. The district court concluded that the totality of the circumstances demonstrated that appellant's guilty plea was valid, see *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000), and substantial evidence supports that conclusion. Therefore, the district court did not err in denying this claim.

Next, appellant argues that her counsel was ineffective. 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. Washington*, 466 U.S. 668, 697 (1984). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations that are not belied by the record, and if true, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, appellant argues that her counsel was ineffective for failing to investigate witnesses, file a pretrial petition for a writ of habeas

¹*North Carolina v. Alford*, 400 U.S. 25 (1970).


corpus, or object to inaccuracies in the presentence investigation report (PSI). Appellant fails to demonstrate that her counsel's performance was deficient or that she was prejudiced. Appellant did not identify any witnesses her counsel should have investigated, any issues that should have been raised in a pretrial habeas petition, or what inaccuracies were contained in the PSI. Bare claims, such as these, are insufficient to demonstrate that a petitioner is entitled to relief. *See id.* Therefore, the district court did not err in denying these claims without conducting an evidentiary hearing.

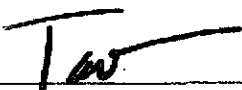
Second, appellant argues that her counsel was ineffective because counsel had a conflict of interest. Appellant asserts that the Clark County Public Defender's Office had represented a codefendant in a separate justice court matter. In the context of an ineffective assistance of counsel claim based on an alleged conflict of interest, "[p]rejudice is presumed only if the defendant demonstrates that counsel 'actively represented conflicting interests' and that 'an actual conflict of interest adversely affected his lawyer's performance.'" *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)); *see also Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). That the Clark County Public Defender's Office represented a codefendant in a separate justice court matter does not demonstrate that appellant's counsel actively represented conflicting interests. Therefore, the district court did not err in denying this claim without considering it at an evidentiary hearing.

Next, appellant claimed that the trial court erred in denying appellant's request for a continuance to permit her time to retain private counsel prior to the sentencing hearing. This claim was not based on an allegation that appellant's guilty plea was involuntarily or unknowingly

entered or that her plea was entered without effective assistance of counsel, and therefore, was not permissible in a post-conviction petition for a writ of habeas corpus stemming from a guilty plea. See NRS 34.810(1)(a). Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Law Office of Julian Gregory, L.L.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk