

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANA ESPERANZA OCEGUEDA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67065

**FILED**

JUL 14 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.<sup>1</sup> Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Ana Esperanza Ocegueda asserted in her May 6, 2014, petition 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).

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

First, Ocegueda asserted her counsel was ineffective because he told her that she would receive probation if she pleaded guilty. Ocegueda failed to demonstrate her counsel's performance was deficient or resulting prejudice. The guilty plea agreement, which Ocegueda signed and acknowledged having read, informed her of the possible range of sentences and the district court's discretion over her ultimate sentence. In addition, Ocegueda was informed at the plea canvass of the possible sentences and that the district court maintained discretion over the appropriate sentence. Moreover, Ocegueda acknowledged in the guilty plea agreement and at the plea canvass that she was not promised a particular sentence by anyone. Ocegueda failed to demonstrate she would have pleaded not guilty and would have insisted on going to trial had counsel had further discussions with her regarding the possible sentences. Therefore, the district court did not err in denying this claim.

Second, Ocegueda asserted her counsel was ineffective for failing to argue she did not improperly use the victim's wife's credit card. Ocegueda failed to demonstrate her counsel's performance was deficient or resulting prejudice. By entry of her plea, Ocegueda agreed that she had used the victim's wife's accounts and had made unauthorized transfers of a substantial amount of money. Ocegueda failed to demonstrate a reasonable probability that she would have pleaded not guilty and would have insisted on going to trial had counsel made attempts to prove Ocegueda did not use the victim's wife's accounts. Therefore, the district court did not err in denying this claim.

Third, Ocegueda asserted her counsel was ineffective for failing to object to the imposition of \$506,000 in restitution. Ocegueda fails to demonstrate her counsel's performance was deficient or resulting prejudice. Ocegueda's counsel asserted at the sentencing hearing that Ocegueda should only have to pay approximately \$366,000 in restitution.

Ocegueda fails to demonstrate a reasonable probability of a different outcome had counsel made further arguments regarding restitution as one of the victims testified that the losses to the business totaled \$506,000 and the sentencing court agreed to impose restitution in that amount. See NRS 176.033(1)(c); *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009) (explaining that a district court has wide discretion when imposing sentence). Therefore, the district court did not err in denying this claim.


Fourth, Ocegueda asserted her counsel was ineffective for failing to ensure the sentencing court was aware of her gambling addiction and treatment for that addiction. Ocegueda fails to demonstrate either deficiency or prejudice for this claim because a lengthy portion of the sentencing hearing consisted of a discussion regarding her gambling issues. Therefore, the district court did not err in denying this claim.

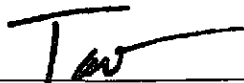
Fifth, Ocegueda asserted her counsel was ineffective for failing to object to victim impact testimony that compared the victims' lifestyle with Ocegueda's. Ocegueda fails to demonstrate her counsel's performance was deficient or resulting prejudice. At the sentencing hearing, a victim discussed purchases Ocegueda made using company credit cards and compared those lavish expenses with the harm the large theft caused the owners and employees of the company. Given the nature of that victim impact testimony, Ocegueda fails to demonstrate objectively reasonable counsel would have objected. See NRS 176.015(3)(b) (victims may "[r]easonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution." Ocegueda fails to demonstrate a reasonable probability of a different outcome had counsel objected to this victim impact testimony. Therefore, the district court did not err in denying this claim.

Finally, Ocegueda asserted her sentence was excessive and the outcome in this case harmed her in a related civil court case. Ocegueda

also claimed the sentencing judge was biased against her. These claims were not based on an allegation that Ocegueda's guilty plea was involuntarily or unknowingly entered or that her plea was entered without effective assistance of counsel, and therefore, were 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 these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Valerie Adair, District Judge  
Ana Esperanza Ocegueda  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>We have reviewed Ocegueda's motion for transcripts at state expense, and we conclude no relief is warranted. To the extent Ocegueda has attempted to present claims or facts which were not previously presented in the proceedings below, we decline to consider them in the first instance.