

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SONNY JAMES GUBBINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67549

FILED

AUG 05 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
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. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On appeal, appellant Sonny Gubbine argues the district court erred in denying his ineffective assistance of counsel claims raised in his petition filed on December 20, 2013. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his 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, 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). 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, Gubbine claims counsel was ineffective for failing to present certain case law in his motion filed in the justice court seeking to disqualify the White Pine District Attorney's office. Gubbine claims counsel's argument that the office should be disqualified pursuant to Nevada Rules of Professional Conduct (NRCP) 1.9 was insufficient, and counsel should have argued *Collier v. Legakes*, 98 Nev. 307, 646 P.2d 1219 (1982), and its "appearance of impropriety" standard.¹

Gubbine fails to demonstrate deficiency or resulting prejudice. NRPC 1.9 was the correct standard to argue in the motion to disqualify. NRPC 1.9 defines conflicts for attorneys who previously represented a client. *Collier* set forth the standard to use when that conflict can be imputed to the entire office. 98 Nev. at 309-310, 646 P.2d at 1220-21. Therefore, before determining whether *Collier* applied, counsel had to first argue that there was a conflict. Because the justice court determined there was no conflict, counsel's failure to argue the *Collier* standard was not deficient.² Further, we note Gubbine did not argue below that had counsel argued *Collier*, he would not have pleaded guilty and would have

¹We note the Nevada Supreme Court overruled *Collier* and its appearance of impropriety standard in *State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. ___, ___, 321 P.3d 882 (2014). However, at the time that Gubbine's motion was filed in the justice court, *Zogheib* had not yet been decided.

²We express no opinion as to whether the justice court's determination there was no conflict was correct.

insisted on going to trial. Therefore, the district court did not err in denying this claim.


To the extent Gubbine argues counsel was ineffective for failing to renew the motion in district court, he fails to demonstrate resulting prejudice. Gubbine failed to allege below that he would not have pleaded guilty and would have insisted on going to trial had the motion been filed. Therefore, the district court did not err in denying this claim.

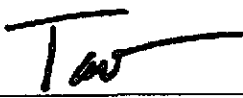
Finally, Gubbine claims his plea was invalid because he was under the influence of Elavil which allegedly has the side effect of causing "false beliefs that cannot be changed by facts." A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). Further, this court will not reverse a district court's determination concerning the validity of a plea absent a clear abuse of discretion. *Hubbard*, 110 Nev. at 675, 877 P.2d at 521. In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000); *Bryant*, 102 Nev. at 271, 721 P.2d at 367.

The district court did not abuse its discretion in determining that the plea was valid. Based on the totality of the circumstances, Gubbine failed to demonstrate he was suffering from the alleged side effect. At the change of plea hearing, Gubbine answered all of the questions properly and all interactions with the district court were coherent and appropriate. Further, Gubbine was specifically questioned regarding the medication he was taking and he informed the district court

it did not affect his ability to enter his plea. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Steve L. Dobrescu, District Judge
Sears Law Firm, Ltd.
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk