

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REBECCA JEAN FLANAGAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67610

FILED

NOV 19 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 postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Rebecca Jean Ferguson argues the district court erred in denying the claims of ineffective assistance of counsel she raised in her October 19, 2011, petition. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific factual allegations that

are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Flanagan argues her counsel was ineffective for failing to investigate and present mitigation evidence at her sentencing hearing. Flanagan asserts counsel should have presented evidence regarding her substance abuse issues, psychological evidence showing she is susceptible to manipulation by the men in her life, and character references. Flanagan fails to demonstrate her counsel's performance was deficient or resulting prejudice. Counsel and Flanagan discussed her substance abuse issues and requested leniency due to those issues. In addition, Flanagan fails to demonstrate a reasonable probability of a different outcome had counsel presented psychological evidence and character references because it is clear from the record the district court based its sentencing decisions on Flanagan's lengthy criminal record. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.


Second, Flanagan argues her counsel was ineffective for failing to object during the sentencing hearing when the State asserted she had undue influence over her codefendant because she was older than him and she had more culpability than her codefendant. Flanagan fails to demonstrate her counsel's performance was deficient or resulting prejudice. Flanagan does not demonstrate that these statements amounted to palpable or highly suspect evidence, *see Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996), and therefore, she does not demonstrate an objectively reasonable counsel would have objected to these statements. As stated previously, it is clear from the record the district court based its sentencing decisions on Flanagan's lengthy criminal record. Accordingly, she fails to demonstrate a reasonable

probability of a different outcome had counsel objected to these statements. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

Third, Flanagan appears to argue her counsel was ineffective for failing to assert Flanagan should not receive a longer sentence than her codefendant because he committed more wrong actions than she did during the commission of these crimes. Flanagan fails to demonstrate her counsel's performance was deficient or resulting prejudice. "[S]entencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms." *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 391, 390 (1990). Accordingly, Flanagan does not demonstrate it was objectively unreasonable for counsel to decline to argue Flanagan deserved a lesser sentence simply because her codefendant received one. Given Flanagan's criminal history, she fails to demonstrate a reasonable probability of a different outcome had counsel argued for a lesser sentence on this basis. Therefore, the district court did not err in denying this claim without conducting an evidentiary hearing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Lester M. Paredes
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk