

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDD PRYOR, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68170

FILED

DEC 18 2015

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Angela*
CLERK 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.¹ Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In his petition filed on March 16, 2015, appellant Edd Pryor claimed he 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 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

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

(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 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).

First, Pryor claimed counsel was ineffective for failing to investigate whether he was required to do individual counseling under the lifetime supervision agreement and whether the counseling center properly terminated him from sex offender treatment. Pryor failed to demonstrate counsel was deficient or resulting prejudice. Pryor agreed to participate in any counseling deemed necessary by the Division of Parole and Probation; therefore, counsel was not deficient for failing to challenge this. Further, Pryor admitted in his petition that he failed to participate in individual counseling and failed to demonstrate how further investigation into why he was terminated would have resulted in a reasonable probability he would not have pleaded guilty. Therefore, the district court did not err in denying these claims.

Second, Pryor claimed counsel was ineffective for failing to investigate whether violating lifetime supervision violated the rule against ex post facto laws because he was sentenced to lifetime supervision before a change in the law in 2007. We note that Pryor's lifetime supervision agreement states he was sentenced on July 11, 2008, and he was informed in the agreement that he could be sentenced for a felony if he violated the

terms of the agreement. Therefore, this claim is without merit, and the district court did not err in denying this claim.

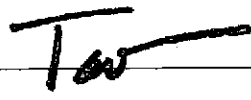
Third, Pryor claimed counsel was ineffective for failing to challenge: the State Board of Parole Commissioners' procedures and policies for imposing lifetime supervision conditions; the constitutionality of NAC 213.290; and NRS 213.1243(1) and NAC 213.290(3) as being in violation of double jeopardy. These claims were outside the scope of this postconviction petition for a writ of habeas corpus because Pryor is challenging actions that occurred in his other criminal case. *See* NRS 34.724(1); NRS 34.720(1). Therefore the district court did not err in denying these claims.

Fourth, Pryor claimed counsel was ineffective for failing to challenge the following conditions of lifetime supervision: the prohibition on possessing explicit sexual material; the prohibition on possessing an electronic device capable of accessing the internet; and the requirement to submit to testing for controlled substances or the prohibition against possession of controlled substances. These claims were outside the scope of Pryor's postconviction petition for a writ of habeas corpus because Pryor was not convicted of violating these conditions. To the extent Pryor claimed these conditions were used to violate his probation, he fails to demonstrate resulting prejudice because he failed to demonstrate a reasonable probability of a different outcome at the revocation hearing. Pryor violated at least two of his probation conditions: he failed to participate in mental health court because he was not accepted and he

tested positive for methamphetamine and marijuana. Therefore, the district court did not err in denying these claims, and we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Valerie Adair, District Judge
Edd Pryor, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We have reviewed all documents Pryor has submitted in this matter, and we conclude no relief based upon those submissions is warranted. To the extent Pryor has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we decline to consider them in the first instance.