


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEONTAE JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67705

**FILED**

FEB 17 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF 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; Douglas W. Herndon, Judge.

Appellant Keontae Johnson argues the district court erred in denying his claim of ineffective assistance of counsel as raised in his April 17, 2013, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that 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).

Johnson first argues his attorney had a conflict of interest because he represented an uncharged codefendant in a different criminal matter. Our review of the record reveals Johnson fails to demonstrate an actual conflict of interest existed. *See Strickland*, 466 U.S. at 692 (citing *Cuyler v. Sullivan*, 446 U.S. 335, 348, 350 (1980)).

At the evidentiary hearing, counsel acknowledged representing the uncharged codefendant in a different matter. Counsel testified that he only represented her at a sentencing hearing for a different matter and had done so at Johnson's request. Counsel testified Johnson had wished for the uncharged codefendant to testify in his defense if this matter had gone to trial, but that Johnson received a favorable plea offer from the State. Counsel also testified he and Johnson had discussed possible concerns regarding the dual representation, that Johnson had agreed to the dual representation, and that the concerns were alleviated by Johnson's decision to plead guilty. The district court concluded Johnson did not demonstrate counsel's representations of both he and the uncharged codefendant adversely affected counsel's performance or created a situation conducive to divided loyalties and substantial evidence supports that conclusion. *See id.*; *see also Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992). Therefore, the district court did not err in denying this claim.

Second, Johnson argues his counsel had a conflict of interest because counsel was possibly in a romantic relationship with Johnson's wife and misadvised Johnson in order to continue the relationship with

Johnson's wife. Our review of the record reveals Johnson fails to demonstrate an actual conflict of interest existed. *See Strickland*, 466 U.S. at 692. At the evidentiary hearing, counsel testified he did not have a romantic relationship with Johnson's wife and the district court concluded Johnson did not demonstrate this claim had merit. The district court further concluded Johnson failed to demonstrate this issue adversely affected counsel's performance or created a situation conducive to divided loyalties and substantial evidence supports that conclusion. *See id.*; *see also Clark*, 108 Nev. at 326, 831 P.2d at 1376. The record before this court supports the district court's findings. Therefore, the district court did not err in denying this claim.

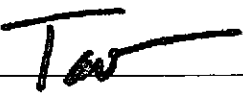
Next, Johnson appears to argue he did not enter a knowing and voluntary guilty plea due to his counsel's conflict of interest. Johnson fails to meet his burden to demonstrate he did not enter a knowing and voluntary plea. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), *superseded by statute on other grounds as stated in Hart v. State*, 116 Nev. 558, 562 n.3, 1 P.3d 969, 971 n.3 (2000). As discussed previously, Johnson did not demonstrate his counsel acted under an actual conflict of interest. Because counsel did not have an actual conflict of interest, Johnson fails to demonstrate that the totality of the circumstances indicates his guilty plea was invalid. *See State v. Freese*, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). Accordingly, the district court did not err in denying this claim.

Finally, Johnson argues the district court erred by denying his presentence motion to withdraw his guilty plea. This claim is not properly raised in a postconviction 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 relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Douglas W. Herndon, District Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk