

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MEREDITH O'NEILL O'FLAHERTY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69594

**FILED**

JUN 22 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *J. Hendrich*  
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. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant Meredith O'Neill O'Flaherty argues the district court erred in denying her claims of ineffective assistance of counsel raised in her June 4, 2014, petition. 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, 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).

O'Flaherty first argues her counsel was ineffective for failing to file a motion to withdraw her guilty plea. O'Flaherty failed to demonstrate her counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, O'Flaherty's counsel testified he and O'Flaherty discussed moving to withdraw her guilty plea, that he advised her she should not withdraw her guilty plea given the favorable plea deal, and O'Flaherty ultimately decided not to file a motion to withdraw her guilty plea. The district court concluded counsel was credible and counsel's actions were reasonable under these circumstances. Substantial evidence supports the district court's conclusions. O'Flaherty failed to demonstrate a fair and just reason that could have been raised in a motion to withdraw her guilty plea, and accordingly, she failed to demonstrate a reasonable probability of a different outcome had counsel moved to withdraw her guilty plea. Therefore, the district court did not err in denying this claim.

Second, O'Flaherty argues her counsel was ineffective for advising her she could be sentenced to serve probation if she provided substantial assistance to law enforcement. O'Flaherty failed to demonstrate her counsel's performance was deficient or resulting prejudice. At the evidentiary hearing, counsel testified O'Flaherty asked him if it was possible for her to receive a favorable sentence if she aided law enforcement, he replied it was possible she could receive leniency in exchange for cooperating with law enforcement, but he did not promise she would receive probation. Counsel testified he discussed this issue with the State and he helped to facilitate a meeting between O'Flaherty and law enforcement. Counsel stated he was informed O'Flaherty did not possess information useful to law enforcement and she was therefore not


able to provide assistance. The district court concluded counsel's advice and actions in this regard were reasonable under the circumstances. Substantial evidence supports the district court's conclusions. O'Flaherty failed to demonstrate a reasonable probability of a different outcome had counsel provided her different advice regarding assistance to law enforcement. Therefore, the district court did not err in denying this claim.


Third, O'Flaherty argues the district court erred in dismissing her claim that her plea was not entered knowingly and intelligently because of her mental health issues without considering it at the evidentiary hearing. O'Flaherty claimed before the district court that her mental health issues, particularly her ingestion of prescription Thorazine to treat those issues, caused her to lack the ability to understand the guilty plea proceedings. The district court concluded this claim was belied by the record because O'Flaherty had asserted at the plea canvass that she was not under any medication that would influence her ability to understand the guilty plea proceedings.


To warrant consideration of a claim at an evidentiary hearing, a petitioner's claims must be supported by specific allegations that are not belied by the record, and if true, would entitle her to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). Our review of the record before this court reveals the district court's conclusion that O'Flaherty's claim was belied by the record was proper given O'Flaherty's statement during the plea canvass. In addition, O'Flaherty asserted at the plea canvass that she had read the guilty plea agreement and had completely understood all of its terms and conditions. Therefore,

the district court properly denied this claim without considering it at the evidentiary hearing.

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

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

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

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

cc: Hon. Scott N. Freeman, District Judge  
Law Offices of Lyn E. Beggs, PLLC  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk