

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM CARL PETERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69462

FILED

SEP 21 2016

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; Richard Scotti, Judge.

Appellant William Peterson claims the district court erred by denying his claims of ineffective assistance of counsel raised in his petition filed on July 28, 2014, and in his supplemental petition filed on February 3, 2015.

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). To demonstrate prejudice sufficient to invalidate a sentencing

hearing, a petitioner must demonstrate a reasonable probability of a different outcome at sentencing. *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*). 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, Peterson claims counsel was ineffective for failing to investigate "clear deficiencies in the Amended Criminal Complaint." Specifically, he claims counsel was ineffective for failing to investigate a statute of limitations defense. Peterson claims the conduct in the first count occurred between 2001 and 2004, and was not reported until 2013. The amended criminal complaint states the conduct occurred between 2000 and 2010. Peterson claims the range of dates was added to the criminal complaint to overcome the statute of limitations which was three years.

Peterson failed to demonstrate counsel was deficient or resulting prejudice. Under NRS 171.095(1)(b), the statute of limitations for sexual abuse of a child, which includes lewdness with a child, *see* NRS 432B.100, is extended to when the child reaches either the age of 36 or 43, depending on the circumstances. The victim in count one of this case was between the ages of 3 and 6 when Peterson committed the lewd conduct with her and she reported it at the age of 16. Therefore, Peterson failed to demonstrate a statute of limitations defense was available or a reasonable probability of a different outcome had counsel pursued a statute of

limitations defense. Accordingly, we conclude the district court did not err in denying this claim.

Second, Peterson claims counsel was ineffective for pressuring him to accept the plea offer, not speaking with him in private about the plea, and not explaining he could get the maximum sentence of 8 to 20 years in prison. Peterson failed to demonstrate counsel was deficient or resulting prejudice. At the evidentiary hearing, counsel testified she told Peterson they should pass his court appearance on the day he signed the guilty plea so they could go over it in person and in private. However, she testified Peterson insisted on doing the plea that day. Counsel also testified she went through the plea agreement, explained the minimum and maximum sentences, and explained the consequences of the plea. Counsel testified she had explained the different sentencing options several times before the signing of the guilty plea agreement.

The district court concluded Peterson and counsel had talked several times before he entered his plea and discussed the benefits and the potential penalties of the plea. Further the district court concluded Peterson failed to demonstrate he would not have pleaded guilty and would have insisted on going to trial because Peterson specifically stated at the evidentiary hearing he did not want to go trial. We conclude substantial evidence supports the district court's decision that counsel was not ineffective. Therefore, the district court did not err in denying this claim.

To the extent Peterson claims his plea was invalid because he did not understand he could be sentenced to 8 to 20 years in prison, Peterson fails to demonstrate his plea was invalid. A guilty plea is

presumptively valid, and a petitioner carries the burden of establishing 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 concluded Peterson's plea was valid. The district court found, as stated above, Peterson had several discussions with counsel regarding the potential penalties he faced. The district court also found Peterson acknowledged at the plea canvass he understood the minimum and maximum possible sentences, that sentencing was up to the district court, and no one had promised him a particular sentence. Based on the totality of the circumstances, we conclude the district court did not abuse its discretion by concluding Peterson entered his plea knowingly and voluntarily. Therefore, the district did not err in denying this claim.

Finally, Peterson claims counsel was ineffective at sentencing for asking for 8 to 20 years in prison, the maximum sentence for each charge, if the district court was not inclined to give him probation. Specifically, Peterson claims his counsel asked the district court to "not adjudicate him guilty and give him an 8-20 on this offense."


Peterson fails to demonstrate counsel was deficient or resulting prejudice. While counsel could have spoken more clearly, when the statement is taken in context, counsel was asking the district court not

to give him the maximum sentence on each of the counts. Further, Peterson failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel not made this statement. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Gibbons C.J.



Tao J.

cc: Hon. Richard Scotti, District Judge
Gregory & Waldo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk