

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEXANDER STEVEN KING,
Appellant,
vs.
THE STATE OF NEVADA; AND ISIDRO
BACA, WARDEN,
Respondents.

No. 72398

FILED

FEB 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth Brown*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Alexander Steven King appeals from a district court order denying the postconviction petition for a writ of habeas corpus he filed on April 27, 2015. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

King claims the district court erred by denying his petition because he received ineffective assistance of defense and appellate counsel. To establish ineffective assistance of defense counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there is a reasonable probability, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 997-88, 923 P.2d 1102, 1107 (1996). Similarly, to establish ineffective assistance of appellate counsel, a petitioner must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that the omitted issue had a reasonable probability of success on appeal. *Id.* at 998, 923 P.2d at 1114.

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district 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, King appears to argue the district court erred by denying his claim defense counsel was ineffective for coercing him into entering a guilty plea. The district court conducted an evidentiary hearing and made the following findings: King entered his guilty plea voluntarily, knowingly, and intelligently on the advice of counsel. And the validity King's guilty plea was thoroughly examined in the district court order denying King's presentence motion to withdraw his guilty plea, which was upheld on direct appeal. The record supports the district court's findings and we conclude King was not deprived of effective assistance of counsel in this regard. See *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004); *King v. State*, Docket No. 65462 (Order of Affirmance, March 17, 2015).


Second, King argues the district court erred by denying his claim defense counsel was ineffective at sentencing for failing to object to improper victim impact evidence and for failing to present mitigating evidence. The district court conducted an evidentiary hearing and made the following findings: Defense counsel testified he was aware of the victim-impact-statement statute and probably should have objected to the victim impact testimony of a witness who was not a victim under the statute. An objection would not necessarily have prevented the district court from considering the witness's testimony. King did not identify any authority which required the district court to reject such testimony. And defense


counsel made a strategic decision as to what mitigating evidence to present and fully argued King's mental and social history to the sentencing court. The record supports the district court's findings and we conclude King was not deprived of effective assistance of counsel in this regard. See NRS 176.015(6); *Doleman v. State*, 112 Nev. 843, 848, 921 P.2d 278, 280-81 (1996); *Woods v. State*, 111 Nev. 428, 430, 892 P.2d 944, 945-46 (1995).


Third, King argues the district court erred in denying his claim defense counsel was ineffective for failing to investigate and advise him on the defenses of coercion and accident. The district court conducted an evidentiary hearing and made the following findings: Defense counsel discussed the case in depth with King and informed him he did not have a defense. King's testimony that he was forced to commit the burglary was speculative, he failed to point out any specific fact that would have supported a defense of coercion, and it was highly unlikely a jury would have concluded he was forced to commit the underlying felony and consequently was not guilty of felony murder. King's testimony he knew he was being chased by the victim, removed a handgun from his holster, loaded a round into the chamber of the handgun, and shot the handgun in the direction of the victim was in stark contrast with the eyewitness statement that King turned and faced the victim, lifted the handgun, and shot the victim in the chest. And King failed to demonstrate his testimony would have changed the outcome in the case. The record supports the district court's findings and we conclude King was not deprived of effective assistance of counsel in this regard. See NRS 200.030(1)(b); *Sanchez-Dominguez v. State*, 130 Nev. 85, 93, 318 P.3d 1068, 1074 (2014); *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

Fourth, King argues the district court erred in denying his claim defense and appellate counsel were ineffective for failing to object to and litigate the State's breach of the plea agreement. King asserts the State breached the plea agreement by calling a witness, who did not meet the statutory definition of a victim, to the stand to ask for a sentence greater than the sentence the State agreed to in the plea agreement. The district court conducted an evidentiary hearing and made the following relevant findings: The State did not breach the plea agreement. Defense counsel's failure to object to the witness who was not a victim as defined by the statute was harmless because even without that witness' testimony the outcome of the sentencing hearing would have been the same. And King did not demonstrate a reasonable probability this issue would have been successful on appeal. The record supports the district court's findings and we conclude King was not deprived of effective assistance of counsel in this regard. See NRS 176.015(3)(b); *Stubbs v. State*, 114 Nev. 1412, 1415, 972 P.2d 843, 845 (1998); *Woods*, 111 Nev. at 430, 892 P.2d at 945-46.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. John Schlegelmilch, District Judge
Karla K. Butko
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk