

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCUS BOYD, A/K/A MARCIS
ANTHONY BOYD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73625

FILED

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marcus Boyd appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on February 28, 2017.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Boyd claims the district court erred by denying his claims of ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction, 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, the result of the proceeding would have been different. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). When considering whether prejudice exists regarding an ineffective assistance of counsel claim challenging a judgment of conviction based on a guilty plea, a petitioner must demonstrate there is a reasonable probability,

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Id.* 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).

First, Boyd claimed counsel was ineffective for failing to provide him with his presentence investigation report (PSI) prior to sentencing. Boyd failed to demonstrate he was prejudiced by the failure to provide him with the PSI because he failed to demonstrate a reasonable probability of a different outcome at sentencing. Specifically, Boyd failed to allege there were errors in his PSI that would have affected the outcome at sentencing. Therefore, the district court did not err by denying this claim.

Second, Boyd claimed counsel was ineffective for failing to present mitigating evidence at sentencing. Specifically, he claimed counsel should have presented evidence regarding his history of physical and sexual abuse growing up as a foster child. Boyd failed to demonstrate he was prejudiced by the failure to present this evidence because he failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented this evidence. The district court based its sentence on Boyd's past criminal history which included one felony, two gross misdemeanors, and 19 misdemeanors. The district court was also troubled by the facts of the case where Boyd prostituted the victim for the last five years starting when she was 14. Therefore, the district court did not err by denying this claim.

Third, Boyd claimed counsel was ineffective for failing to communicate with him. Boyd failed to demonstrate was he prejudiced by counsel's alleged failure to communicate with him because he failed to demonstrate a reasonable probability of a different outcome had counsel further communicated with him. Boyd failed to demonstrate what information he could have provided to counsel that would have resulted in him not pleading guilty or would have resulted in a different outcome at sentencing. Therefore, the district court did not err by denying this claim.

Next, Boyd claimed the sentencing judge was biased against him because the judge did not inquire whether Boyd had read or discussed the PSI, did not allow him to fully present mitigation evidence and interrupted his allocution, and rejected the stipulated sentence without giving him the option to withdraw his plea. He also claimed his conviction violated the Double Jeopardy Clause. These claims were outside the scope of a postconviction petition for a writ of habeas corpus challenging a judgment of conviction entered pursuant to a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err by denying these claims.


Finally, to the extent Boyd claimed his plea was invalid because he was not able to withdraw his plea after the district court deviated from the parties' recommended sentence, this claim lacks merit. While the plea agreement does state Boyd and the State stipulated to a sentence of 12 to 30 months, this was not a stipulation the district court was bound to follow. The plea agreement specifically states,


I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both

recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

Further, Boyd was canvassed regarding this issue at his change of plea hearing, and he acknowledged his sentence was up to the district court. Therefore, Boyd's plea was not invalid because he would not have been allowed to withdraw his plea just because the district court deviated from the recommended sentence. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (a guilty plea is presumptively valid). Accordingly, the district court did not err by denying this claim.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Marcus Boyd
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk