

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRANDON DAVIS, A/K/A
KRISTOPHER JARRELL LAWSON,
Appellant,
vs.
ISIDRO BACA, WARDEN,
Respondent.

No. 74109

FILED

SEP 11 2018

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

ORDER OF AFFIRMANCE

Brandon Davis appeals from an order of the district court denying a motion for modification of sentence, a postconviction petition for a writ of habeas corpus, and a motion to strike victim impact statement.¹ Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

First, Davis argues the district court erred by denying his February 13, 2017, motion for modification of sentence. In his motion, Davis requested the district court to remove a victim impact statement from his case file. Davis' claim fell outside the narrow scope of claims permissible in a motion for modification of sentence. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). Therefore, without considering the merits of any claim raised in the motion, we conclude the district court did not err by denying the motion.

Second, Davis argues the district court erred by denying his claims of ineffective assistance of counsel he raised in his June 26, 2017, postconviction petition for a writ of habeas corpus. To prove ineffective

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

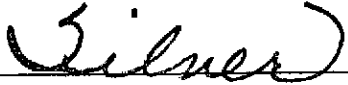
assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability, but for counsel's errors, 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).


Davis argued his counsel was ineffective for failing to request the district court to remove Cecilia Carrol's victim impact statement from the presentence investigation report (PSI) and for failing to object to the PSI including Cecilia Carrol as a victim in this case. Davis asserted that he would have received a shorter sentence had his counsel raised these objections concerning Cecilia Carrol's victim impact statement. Davis failed to demonstrate resulting prejudice. Davis did not demonstrate his sentence was based upon the challenged victim impact statement because the sentencing court did not refer to Cecilia Carrol or her victim impact statement when imposing sentence. Given the record in this case, Davis failed to demonstrate a reasonable probability of a different outcome had Davis' counsel objected to inclusion of Cecilia Carrol's victim impact statement in the record in this matter. Accordingly, we conclude the district court did not err by denying these claims.

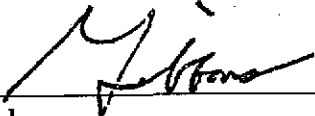
In addition, Davis claimed the sentencing court improperly considered Cecilia Carrol's victim impact statement when imposing sentence. This claim was not based on an allegation that Davis' plea was involuntarily or unknowingly entered or that his plea was entered without

the effective assistance of counsel and, therefore, was not permissible 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 by denying relief for this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Barry L. Breslow, District Judge
Brandon Davis
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²To the extent Davis argues the district court erred by denying his motion to strike the victim impact statement, we conclude Davis fails to demonstrate he is entitled to relief.