

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEANNE ANGUIANO, A/K/A JEANNE
OPORTO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73916-COA

FILED

NOV 06 2018

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

ORDER OF AFFIRMANCE

Jeanne Anguiano appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on May 2, 2017.¹ Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Anguiano contends the district court erred by denying her petition without first conducting an evidentiary hearing. To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that, if true and not repelled by the record, would entitle her to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

Anguiano first claimed she received ineffective assistance from counsel. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective

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

standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); see *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985) (applying *Strickland* in the context of a conviction pursuant to a guilty plea); *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996) (applying *Strickland* to claims of ineffective assistance of appellate counsel). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697.

First, Anguiano claimed counsel was ineffective for failing to raise Anguiano's incompetency. Anguiano claimed the injuries she sustained during the commission of the crime and the prescription medications she was on rendered her incompetent to enter her guilty plea. Anguiano failed to demonstrate deficiency or prejudice. Anguiano failed to allege specific facts that would indicate she was incompetent or cause counsel to question her competency. In particular, she did not claim she lacked the ability to understand the nature and purpose of the criminal charges and the court proceedings or to aid and assist counsel in her defense with a reasonable degree of rational understanding. See NRS 178.400(2) (defining "incompetent"); *Melchor-Gloria v. State*, 99 Nev. 174, 179-80, 660 P.2d 109, 113 (1983) (setting out the standard for competency). We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Anguiano claimed counsel was ineffective for failing to move to dismiss her case because she was not promptly brought before a

magistrate without unnecessary delay.² Anguiano concedes she was hospitalized as a result of the crimes and was not discharged until on or about July 2, 2015, and a probable-cause hearing was held four days later on July 6. Any delay until July 2 was reasonable and unavoidable. See *McLaughlin*, 500 U.S. at 56-57 (discussing unavoidable delays “and other practical realities”). Assuming, without deciding, that the subsequent, alleged four-day delay was unreasonable, Anguiano nevertheless failed to demonstrate deficiency or prejudice. An untimely probable-cause hearing does not necessarily lead to dismissal of the charges. *Powell v. Nevada*, 511 U.S. 79, 84 (1994). Rather, this court must determine whether the delay was harmless beyond a reasonable doubt. *Powell v. State*, 113 Nev. 41, 46-47, 930 P.2d 1123, 1126 (1997). Anguiano failed to allege any harm from the delay.³ We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Anguiano claimed counsel was ineffective for failing to move to suppress the results of the blood draw because the affidavit in support of the application for the warrant to draw her blood contained a

²Anguiano, appearing in pro se, raised her claim as a violation of the 72-hour rule of NRS 171.178. We note, however, that to satisfy the Fourth Amendment’s requirement that a probable-cause determination be made “either before or promptly after arrest,” an arrested person should be brought before a magistrate within 48 hours, including non-judicial days, for the determination of probable cause. See *County of Riverside v. McLaughlin*, 500 U.S. 44, 52, 56-57 (1991).

³To the contrary, Anguiano alleged she was harmed because there should have been further delay to allow her more time to recover from her injuries.

deliberately false statement such that the warrant was invalid. Anguiano's claim was belied by the document excerpt she provided as proof of her claim. The document, purportedly an excerpt of the affidavit, states, "The [meth] pipe was seen to have been ditched," a statement that was contradicted by information in the police report. However, the next sentence in the document excerpt reflected the "corrected information" that, shortly after Anguiano was placed in the ambulance, the paramedic noticed the pipe near Anguiano and handed the pipe to an officer. This is consistent with the information in the police report. Thus the warrant was not issued based on any misinformation. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Fourth, Anguiano claimed counsel was ineffective for failing to move to suppress the results of the blood draw because insufficient evidence supported that she ever possessed the above-referenced meth pipe, which was used to establish probable cause that she was driving under the influence of a controlled substance. Anguiano failed to demonstrate deficiency or prejudice. The police report indicated the paramedic thoroughly cleaned the ambulance between patients such that the pipe could not have come from anyone but Anguiano. Accordingly, sufficient evidence supported that Anguiano was in possession of a meth pipe and, accordingly, there was probable cause to believe she was driving under the influence of a controlled substance. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Finally, Anguiano claimed appellate counsel was ineffective for failing to raise claims of ineffective assistance of trial-level counsel in her

appeal. Anguiano failed to demonstrate deficiency or prejudice. It would have been futile for counsel to raise such a claim, because Nevada's appellate courts generally will not address ineffective-assistance claims on direct appeal. *See Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001). We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. *See Donovan v. State*, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978).


Anguiano next claimed her guilty plea was not entered into knowingly and intelligently because she had suffered injuries in the commission of the crimes and was taking prescription medications at the times of her court appearances. The record demonstrates Anguiano's plea was valid. Anguiano acknowledged in her guilty plea agreement that her ability to comprehend or understand the agreement or proceedings regarding the entry of her plea was not compromised by her being under the influence of a controlled substance or other drug. Further, during her plea colloquy, Anguiano acknowledged she had read and understood her plea agreement, and she gave both "yes" and "no" responses as appropriate. Anguiano did not allege any specific facts in contradiction. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

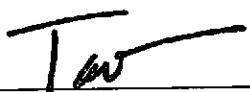
Anguiano next claimed the State breached the guilty plea agreement when, in responding to Anguiano's opening brief on direct appeal, the State argued in support of the judgment of conviction. Nothing in Anguiano's plea agreement limited the State's actions after sentence was imposed. The State was thus free to argue as it saw fit in response to Anguiano's appeal. To the extent Anguiano also claimed the district court


breached the agreement, we note the district court was not a party to—and was thus not bound by—the agreement. We therefore conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Jeanne Anguiano
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We conclude the district court did not abuse its discretion by declining to appoint postconviction counsel. See NRS 34.750(1); *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).