

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMARTICE WRIGHT, A/K/A  
KEYVONTE KEYA LAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 73404

**FILED**

SEP 26 2018

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

*ORDER OF AFFIRMANCE*

Lamartice Wright appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 7, 2013, a supplemental petition filed on July 9, 2015, and a second supplemental petition filed on January 20, 2017. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Wright argues the district court erred by denying his claim that counsel was ineffective for failing to convey a plea offer to him. To prove ineffective assistance of counsel, a petitioner must demonstrate counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice. *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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). 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).

Counsel has a duty to convey favorable plea offers to his client, and the failure to do so is objectively unreasonable. *Missouri v. Frye*, 566 U.S. 134, 145 (2012). To demonstrate prejudice in such a situation, a petitioner must show a reasonable probability of four things: (1) he would have accepted the earlier, uncommunicated plea offer, (2) the State would not have rescinded the offer prior to entry of the plea, (3) the trial court would not have rejected the guilty plea, and (4) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Id.* at 147.

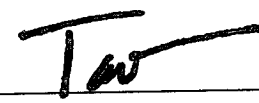
After holding an evidentiary hearing, the district court found Wright failed to demonstrate there was an offer that was not conveyed or that Wright would have accepted an offer had it been conveyed. The district court found only one formal offer was made by the State and it was rejected by Wright on the record. Further, the district court found the handwritten note was not a separate formal offer from the State because it does not appear the State wrote the note, it is not dated, and critical terms of the bargain are not contained in the note. The district court also found Wright failed to demonstrate a reasonable probability he would have taken the deal because he told his counsel in this case, and separate counsel in another case, that he would not accept a global plea agreement because the victim could not identify him and he did not believe his codefendant would testify against him.


Substantial evidence supports the decision of the district court. We also conclude the offer rejected by Wright on the record was substantially similar to the “offer” contained in the handwritten note and,

therefore, Wright failed to demonstrate he would have taken the alleged earlier offer contained in the handwritten note. Accordingly, we conclude the district court did not err by denying the petition, and we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William D. Kephart, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk