

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GIA BUFORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74120-COA

FILED

NOV 19 2018

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Gia Buford appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Buford argues the district court erred by denying the claims of ineffective assistance of counsel raised in her June 9, 2017, petition. 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 such that there is a reasonable probability, but for counsel's errors, the outcome of the proceedings would have been different. *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).

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

First, Buford argued her trial counsel was ineffective for failing to adopt a pretrial petition for a writ of habeas corpus or a motion to dismiss the charges that was filed by her initial counsel. Buford failed to demonstrate her counsel's performance was deficient or resulting prejudice. Buford contended her initial counsel filed a pretrial petition for a writ of habeas corpus or a motion to dismiss, but her trial counsel failed to adopt those documents when he replaced the initial counsel. However, the record demonstrates Buford's initial counsel did not file such a petition or motion. Therefore, Buford's trial counsel could not have adopted such a petition or motion. Buford failed to demonstrate a reasonable probability of a different outcome had her trial counsel performed different actions in this regard when replacing her initial counsel. Therefore, we conclude the district court did not err by denying this claim.

Second, Buford argued her trial counsel was ineffective for failing to challenge the indictment. Buford asserted the indictment improperly alleged she committed fraudulent activities at two separate locations on the same night, did not properly specify the locations of the crimes, and did not properly identify her. Buford failed to demonstrate her counsel's performance was deficient or resulting prejudice. A review of the indictment reveals it alleged Buford acted in a supervisory capacity at two different businesses which operated to fraudulently induce victims to believe they would receive sexual services in exchange for substantial sums of money. The indictment also alleged that Buford, using an alias, either personally interacted with the victims or aided and abetted others in doing so. Accordingly, the indictment contained plain and concise statements of the essential facts of the charged crimes. *See* NRS 173.075(1). Buford failed to demonstrate an objectively reasonable counsel would have challenged the

indictment on these bases or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Third, Buford argued her trial counsel should have moved to dismiss the charges because the evidence produced before the grand jury demonstrated she was not the businesses' owner, and the State prejudicially described each business as a scam or a "clip joint." Buford failed to demonstrate her counsel's performance was deficient or resulting prejudice. A review of the record demonstrated the State presented sufficient evidence to support the grand jury's probable cause finding. *See Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (explaining that State need only present slight or marginal evidence to demonstrate probable cause to support a criminal charge). In addition, witnesses testified before the grand jury that the businesses were operated with the intention of defrauding customers, and Buford failed to demonstrate such testimony was improper. Therefore, Buford failed to demonstrate objectively reasonable counsel would have moved to dismiss the charges on these bases. In addition, Buford failed to demonstrate a reasonable probability of a different outcome had counsel asserted error at the grand jury proceedings because she was ultimately convicted at trial beyond a reasonable doubt. *See Lisle v. State*, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998) (citing *United States v. Mechanik*, 475 U.S. 66, 70 (1986)). Therefore, we conclude the district court did not err by denying this claim.

Fourth, Buford argued her counsel should have moved to dismiss count 14 in the indictment. Buford asserted count 14 alleged she defrauded a victim of \$180, but that amount of money was too low for the crime to have constituted felony multiple transactions involving fraud or

deceit in course of enterprise or occupation. Buford failed to demonstrate her counsel's performance was deficient or resulting prejudice. The State alleged Buford committed felony level multiple transactions involving fraud or deceit in course of enterprise or occupation by knowingly operating a fraudulent business that misrepresented it would supply sexual services in exchange for payment. The State alleged that the victim in count 14 actually lost \$180 and Buford, along with others, intended to deprive him of an aggregate loss of more than \$250. These allegations were sufficient to support a felony charge. *See* 2009 Nev. Stat., ch. 49, § 1, at 143-44 (former NRS 205.377). Accordingly, Buford failed to demonstrate objectively reasonable counsel would have moved to dismiss count 14 on this basis or a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err by denying this claim.

Next, Buford claimed witnesses provided false testimony before the grand jury and during trial, the State destroyed or failed to collect surveillance evidence, the search warrant was defective, the trial court improperly declined to utilize a mere presence jury instruction, the racketeering instruction failed to explain the jury had to find she committed every element of that offense, the trial court failed to instruct the jury regarding lost or destroyed evidence, and the trial court improperly declined to instruct the jury regarding payments to witnesses in exchange for their testimony. These claims could have been raised on direct appeal and Buford failed to demonstrate cause for the failure to do so and actual prejudice. *See* NRS 34.810(1)(b). Therefore, the district court did not err in denying relief for these claims.


Next, Buford argues the district court erred by declining to conduct an evidentiary hearing and denying her request for production of

documents. To warrant an evidentiary hearing, a petitioner must raise claims that are supported by specific allegations not belied by the record and, if true, would entitle her to relief. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). The district court concluded Buford's claims did not meet that standard and the record before this court reveals the district court's conclusions in this regard were proper. In addition, because the district court did not set an evidentiary hearing, Buford was not entitled to conduct discovery, see NRS 34.780(2), and, therefore, Buford failed to demonstrate the district court erred by denying her request for the production of documents.

Finally, Buford argues the district court erred by denying her request for the appointment of postconviction counsel. The appointment of postconviction counsel was discretionary in this matter. See NRS 34.750(1). After a review of the record, we conclude the district court did not abuse its discretion in this regard as this matter was not sufficiently complex so as to warrant the appointment of postconviction counsel. See *Renteria-Novoa v. State*, 133 Nev. ___, ___, 391 P.3d 760, 760-61 (2017).

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

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