

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICHOLAS JAMES STONE,
Appellant,
vs.
THE STATE OF NEVADA; AND BRIAN
WILLIAMS, WARDEN OF SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondents.

No. 73612-COA

FILED

DEC 19 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

NICHOLAS JAMES STONE,
Appellant,
vs.
THE STATE OF NEVADA; AND BRIAN
WILLIAMS, WARDEN OF SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondents.

No. 73613-COA

NICHOLAS JAMES STONE,
Appellant,
vs.
THE STATE OF NEVADA; AND BRIAN
WILLIAMS, WARDEN OF SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondents.

No. 73614-COA ✓

ORDER OF AFFIRMANCE

Nicholas James Stone appeals from a district court order denying postconviction petitions for writs of a habeas corpus filed in district court case numbers HC-13-846, HC-13-850, and HC-13-852 on August 7, 2015. Fifth Judicial District Court, Esmeralda County; Robert W. Lane, Judge.

Stone claims the district court erred by denying his ineffective-assistance-of-counsel claims. To prove ineffective 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). 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, Stone claimed his counsel were ineffective for failing to have a meaningful relationship with him, communicate with him, or interview him. Stone failed to demonstrate he was prejudiced by counsel's performance because he failed to demonstrate he would not have pleaded guilty and would have insisted on going to trial had counsel had a more meaningful relationship with him, communicated with him, or interviewed him. Therefore, we conclude the district court did not err by denying this claim.

Second, Stone claimed his counsel were ineffective for failing to investigate and verify the allegations against him. He claimed counsel should have interviewed witnesses and the arresting officers listed in discovery. Stone failed to demonstrate his counsel were deficient or resulting prejudice because he failed to demonstrate what a more thorough

investigation would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Therefore, we conclude the district court did not err by denying this claim.

Third, Stone claimed his counsel were ineffective for failing to file motions to suppress or a motion pertaining to discovery. Stone failed to demonstrate his counsel were deficient or resulting prejudice because he failed to support this claim with specific facts that, if true, would entitled him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). Therefore, we conclude the district court did not err by denying this claim.

Fourth, Stone claimed his counsel were ineffective for failing to request independent laboratory testing of the evidence. Stone failed to demonstrate his counsel were deficient or resulting prejudice because he failed to demonstrate what further testing of the evidence would have revealed. *See Molina*, 120 Nev. at 192, 87 P.3d at 538. Therefore, we conclude the district court did not err by denying this claim.

Fifth, Stone claimed his counsel were ineffective for failing to catch the errors in the original guilty plea agreement. At the change of plea hearing, it was discovered that the minimum and maximum sentences listed in the guilty plea were incorrect. The sentences for trafficking in a controlled substance and driving under the influence of an intoxicating liquor or controlled substance (third offense within seven years) were both listed as being a minimum of one year and a maximum of twenty years in prison. However, the sentencing range for trafficking in a controlled substance is two years to fifteen years in prison, *see* NRS 453.3385(1)(b) and the sentencing range for driving under the influence is one year to six years in prison, *see* NRS 484C.400(1)(c). The district court caught the error and

specifically canvassed Stone regarding the correct minimum and maximum sentences. While it does not appear counsel caught the error in the written guilty plea agreement, plea counsel stated at the change of plea hearing that he correctly stated the minimum and maximum sentences to Stone when explaining the deal to him.

Based on these facts, we conclude Stone failed to demonstrate he was prejudiced by counsels' performance or that his plea was not knowingly and voluntarily entered. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986). Therefore, we conclude the district court did not err by denying this claim.

Finally, we conclude Stone failed to demonstrate the cumulative errors of counsel entitled him to relief. *See generally Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Silver

C.J.



Tao

J.



Gibbons

J.

cc: Hon. Robert W. Lane, District Judge
Carl M. Joerger
Attorney General/Carson City
Esmeralda County District Attorney
Esmeralda County Clerk