

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NICOLE MAXWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75328-COA

FILED

DEC 19 2018

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

ORDER OF AFFIRMANCE

Nicole Maxwell appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 29, 2017.¹ Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Maxwell argues the district court erred by denying her claims that her plea was invalid because she was coerced into pleading guilty. After sentencing, a district court may permit a petitioner to withdraw a guilty plea where necessary “[t]o correct manifest injustice.” NRS 176.165. A guilty plea is presumptively valid, and a petitioner carries the burden of establishing that the plea was not entered knowingly and intelligently. *Hubbard v. State*, 110 Nev. 671, 877 P.2d 519 (1994). In determining the validity of a guilty plea, this court looks to the totality of the circumstances. *State v. Freese*, 116 Nev. 1097, 13 P.3d 442 (2000). “[We] will not overturn the district court’s determination on manifest injustice absent a clear

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

showing of an abuse of discretion.” *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1229 (2008) (internal quotation marks omitted).

Maxwell claimed her plea was coerced because a parole and probation officer told her she would get twenty years in prison. Maxwell failed to demonstrate her plea was invalid because this claim is belied by the record. In her guilty plea agreement, Maxwell agreed she had not been coerced into pleading guilty. Further, at the change of plea hearing, Maxwell told the district court no one made any threats or promises other than those included in the negotiation. Therefore, Maxwell failed to demonstrate a manifest injustice, and we conclude the district court did not err by denying this claim.

Next, Maxwell claims the district court erred by denying her claim counsel was ineffective for failing to investigate. 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).

Maxwell claimed counsel should have investigated the circumstances surrounding her arrest, the fact that the majority of those

who work for Nye County are under investigation, and the fact that when she received a statement of new charges, burglary was not included. Maxwell failed to demonstrate counsel was deficient or resulting prejudice. She failed to demonstrate what investigation into these issues would have revealed. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004) (a petitioner claiming counsel did not conduct an adequate investigation must specify what a more thorough investigation would have uncovered). Further, she failed to allege she would not have pleaded guilty, and would have insisted on going to trial had counsel investigated these issues. Therefore, we conclude the district court did not err by denying this claim.


Maxwell also claimed counsel was ineffective because after her conviction, counsel included other people's paperwork when counsel sent her case file to her. Maxwell failed to demonstrate counsel was deficient or resulting prejudice because she did not allege she did not receive her complete file and she failed to demonstrate a reasonable probability of a different outcome of these proceedings had counsel not sent her other people's paperwork. *Strickland*, 466 U.S. at 687-88. Therefore, the district court did not err by denying this claim.

Finally, Maxwell raised several claims that were not properly raised in her petition: the justice court judge fell asleep at the bench; an attorney who previously represented her was now representing her codefendant; and she was charged a fee for the appointment of counsel and the preparation of her presentence investigation report, but this was erroneous because she is indigent. These claims fell outside the narrow scope of claims that may be raised in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea.

See NRS 34.810(1)(a). Therefore, we conclude the district court did not err by denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Nicole Maxwell
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk