

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ADAM MCGUFFEY,  
Appellant,  
vs.  
WARDEN, C.C.C.; AND THE STATE OF  
NEVADA,  
Respondents.

No. 73549-COA

FILED

JAN 17 2019

ELIZABETH A. TOWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Robert Adam McGuffey appeals from orders of the district court denying a postconviction petition for a writ of habeas corpus filed on July 9, 2014, and supplemental petitions filed on September 11, 2014, October 15, 2015, and January 31, 2017. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

McGuffey contends the district court erred by denying his claim that his guilty plea was invalid because it was the product of coercion. Specifically, McGuffey claimed he was subjected to solitary confinement for six months and was tortured such that he was forced to plead guilty to escape the intolerable jail conditions. McGuffey failed to demonstrate he would suffer a manifest injustice were he not allowed to withdraw his guilty plea. *See* NRS 176.165. The district court found the only evidence of coercion was McGuffey's testimony and that the testimony was not credible. We defer to the district court's findings because they are supported by substantial evidence in the record before this court. *See Little v. Warden,*

117 Nev. 845, 854, 34 P.3d 540, 546 (2001). Two jail employees testified at the evidentiary hearing that McGuffey was not continuously held in solitary confinement and they were unaware of any unnecessary violence directed at McGuffey by jail personnel. We therefore conclude the district court did not err by denying this claim.<sup>1</sup>

McGuffey next contends the district court erred by denying his claims that defense counsel was ineffective. To demonstrate ineffective assistance of counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective 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); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). Where the judgment of conviction was based on a guilty plea, a petitioner must show that, but for counsel's errors, there is a reasonable probability 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*, 466 U.S. at 697.

The petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012, 103

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<sup>1</sup>To the extent McGuffey claims counsel was ineffective for coercing his guilty plea, he fails to support the claim with relevant authority or cogent argument, and we thus decline to address the claim. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

P.3d 25, 33 (2004). For purposes of the deficiency prong, counsel is strongly presumed to have provided adequate assistance and exercised reasonable professional judgment in all significant decisions, *Strickland*, 466 U.S. at 690, and “counsel’s strategic or tactical decisions will be virtually unchallengeable absent extraordinary circumstances,” *Lara v. State*, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004) (internal quotation marks omitted). We give deference to the district court’s factual findings that are supported by substantial evidence and not clearly wrong 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, McGuffey claimed counsel should have obtained a psychological evaluation of McGuffey and presented it as mitigation evidence at the sentencing hearing. McGuffey failed to demonstrate deficiency. Counsel testified at the evidentiary hearing that he already had several competency evaluations with conflicting diagnoses and he feared a psychological evaluation could undermine the argument he was going to make at sentencing. The district court implicitly found this was reasonable trial strategy, and McGuffey failed to demonstrate there were extraordinary circumstances that would warrant challenging counsel’s strategy. We therefore conclude the district court did not err by denying this claim.

Second, McGuffey claimed counsel should not have waived his right to a speedy trial without McGuffey’s consent and the delay resulted in the conditions leading to his coerced guilty plea. McGuffey failed to demonstrate deficiency or prejudice. Counsel did not need to obtain McGuffey’s consent. *See New York v. Hill*, 528 U.S. 110, 114-15 (2000)


(concluding counsel may waive a client's statutory right to a speedy trial because counsel generally controls scheduling matters). And McGuffey failed to demonstrate there were extraordinary circumstances that would warrant challenging counsel's strategy to get the two most serious charges dismissed prior to trial. Moreover, as discussed above, McGuffey failed to demonstrate his plea was coerced. We therefore conclude the district court did not err by denying this claim.

McGuffey contends the district court erred by finding he did not have an absolute right to enter the home he was convicted of burgling. McGuffey raised his purported right to enter the home in two different claims below: that he could not be convicted of burglary and that counsel was ineffective for not arguing this. His opening brief on appeal fails to identify the underlying claim he is challenging. To the extent McGuffey is appealing his claim that he cannot be convicted of burglary, the claim is outside the scope of those allowed in a postconviction petition for writ of habeas corpus challenging a judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a).

To the extent he is appealing the denial of his claim that counsel was ineffective for failing to investigate his residency, he failed to demonstrate deficiency or prejudice. Counsel testified at the evidentiary hearing that he had McGuffey's residency investigated but, because of conflicting evidence, felt the issue would be better addressed at trial. McGuffey failed to demonstrate there were extraordinary circumstances that would warrant challenging counsel's strategy. Further, while "a person with an absolute right to enter a structure cannot commit burglary

of that structure,” *State v. White*, 130 Nev. 533, 538, 330 P.3d 482, 485 (2014), the district court found McGuffey did not have such a right, and that finding is supported by the record before this court. Notably, the lease for the residence prohibited felons such as McGuffey from living there. We therefore conclude the district court did not err by denying these claims. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>2</sup>

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

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

cc: Hon. Lynne K. Simons, District Judge  
Troy Curtis Jordan  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk

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<sup>2</sup>The Honorable Michael L. Douglas did not participate in the decision in this matter.