

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CECILIA MARIA CHAVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75553-COA

FILED

APR 16 2019

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

ORDER OF AFFIRMANCE

Cecilia Maria Chavez appeals from a district court order denying a postconviction petition for a writ of habeas corpus filed on December 21, 2017.¹ Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Chavez claimed defense counsel was ineffective.² To establish ineffective assistance of counsel, a petitioner who has been convicted

¹This appeal has been submitted for decision without oral argument and we conclude the record is sufficient for our review and briefing is unwarranted. NRAP 34(f)(3), (g).

²The State argued in the court below that Chavez' petition was procedurally-barred because it was filed more than one year after the entry of her judgment of conviction on December 19, 2016, and no direct appeal was taken. However, the record demonstrates the district court clerk received Chavez' petition on December 18, 2017, but did not file it until December 21, 2017. Given this record, we conclude Chavez would have had good cause to excuse the procedural bar and therefore the district court did not err by reaching the merits of her petition. *See* NRS 34.726(1); *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2006).

pursuant to a guilty plea must demonstrate counsel's performance was deficient because it fell below an objective standard of reasonableness, and resulting prejudice in that there is a reasonable probability, but for counsel's errors, the petitioner would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 997-88, 923 P.2d 1102, 1107 (1996).

The petitioner must demonstrate both components of the ineffective-assistance inquiry—deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the district court's factual findings if they are supported by substantial evidence and are not clearly wrong, but we 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, Chavez claimed counsel was ineffective for failing to make pretrial challenges to the State's grand larceny allegations, the burglary while in possession of a firearm allegation, and all of the allegations that included deadly weapon enhancements. Chavez asserted she was an unwitting participant in the robbery, lacked prior knowledge of the burglaries, did not carry away the stolen property, and was not responsible for her codefendant's use of the firearm. The district court found counsel's performance was reasonable and Chavez failed to show she was prejudiced by counsel's failure to file any pretrial motions or petitions. We conclude Chavez failed to demonstrate counsel was ineffective and the district court did not err by rejecting this claim. *See Means v. State*, 120

Nev. 1001, 1013, 103 P.3d 25, 33 (2004) (petitioner bears the burden of proving ineffective assistance).

Second, Chavez claimed counsel was ineffective at sentencing for failing to argue that she provided substantial assistance to the police in their recovery of the stolen property and for failing to object to a false statement made by the prosecutor. The district court found these were bare naked claims. We conclude Chavez failed to demonstrate counsel was ineffective and the district court did not err by rejecting this claim. See *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (explaining a petitioner is not entitled to postconviction relief if his claims are bare or naked).


Third, Chavez claimed counsel was ineffective for failing to file a direct appeal. The district court found Chavez did not allege that she requested an appeal. We conclude Chavez failed to demonstrate that she was deprived of an appeal as a result of ineffective assistance of counsel and therefore the district court did not err by rejecting this claim. See *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (“[Defense] counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with [her] conviction.”); *Means*, 120 Nev. at 1012-13, 103 P.3d at 33.

Based on our review of Chavez’ claims, we conclude the district court did not err by denying her postconviction habeas petition without appointing counsel or conducting an evidentiary hearing. See NRS 34.750(1); NRS 34.770(2); *Renteria-Novoa v. State*, 133 Nev. 75, 76, 391 P.3d

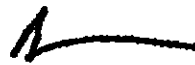
760, 760-61 (2017); *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

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

