

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WAYNE A. JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68301

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a postconviction petition for a writ of habeas corpus. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Appellant Wayne A. Jackson argues the district court erred in denying his claims of ineffective assistance of counsel raised in his November 3, 2013, petition. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that 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, Jackson argues his counsel was ineffective for failing to reasonably investigate the circumstances and law regarding the search of Jackson's residence. Jackson asserts counsel should have discussed this matter with him in detail and reviewed the documentation related to the search, as counsel would have then decided to file a motion to suppress the evidence obtained during the search. Jackson failed to demonstrate his counsel's performance was deficient or resulting prejudice.

At the evidentiary hearing, Jackson's counsel testified that he discussed the evidence and the entire process of the search with Jackson, including Jackson's consent to search and the search warrant. Counsel stated he and Jackson discussed possible challenges to the search, but that counsel concluded there was little chance of success had they sought to suppress the evidence. Counsel further testified that Jackson had retained him with the specific purpose of negotiating a plea agreement and the majority of counsel's efforts went towards securing a favorable agreement. Based upon that testimony, the district court concluded counsel acted in an objectively reasonable manner and substantial evidence supports that conclusion. Jackson failed to demonstrate a reasonable probability of a different outcome had counsel had further discussions with Jackson or reviewed the search documentation in further detail. Therefore, we conclude the district court did not err in denying this claim.

Second, Jackson argues his counsel was ineffective for failing to file a motion to suppress evidence arguing the initial search of the

residence exceeded the scope of the limited consent Jackson provided to the officers. Jackson asserts he only consented to a search of where a young child had access, and that area did not include the room where the officers discovered a pipe for smoking methamphetamine. Jackson failed to demonstrate his counsel's performance was deficient or resulting prejudice.

During the evidentiary hearing, testimony revealed that officers initially entered Jackson's residence and advised Jackson they had received information that a young child was possibly neglected and exposed to drug activity. Jackson initially consented to a search of areas of the home to which the child had access. Officers testified that they searched a room they understood to be the young child's bedroom and discovered the pipe in a dresser drawer. Following the discovery of the pipe, Jackson withdrew his consent to search. The district court noted that the testimony provided at the hearing included information that the child's diaper was in the room, there appeared to be nothing to prevent the child from accessing that room, and Jackson did not object when the officers entered the room to search it. Based upon this testimony, the district court concluded Jackson had consented to the search of this room and substantial evidence supports that conclusion. *See Canada v. State*, 104 Nev. 288, 291, 756 P.2d 552, 553 (1988) ("Whether the scope of consent has been exceeded is a factual question to be determined by examining the totality of the circumstances.").

Given the record demonstrating that Jackson consented to the search of the child's room, he failed to demonstrate a reasonable probability of a different outcome had counsel filed a motion to suppress

the evidence obtained during the search pursuant to his consent. Therefore, the district court did not err in denying this claim.


Third, Jackson argues his counsel was ineffective for failing to file a motion to suppress evidence arguing the search warrant and accompanying affidavit contained falsehoods and omitted material facts. Jackson failed to demonstrate his counsel's performance was deficient or resulting prejudice.

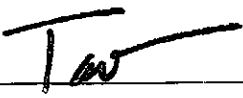
As discussed previously, counsel testified he reviewed the circumstances related to the search and concluded a motion to suppress was unlikely to be successful. Counsel testified he was retained to negotiate a plea agreement and focused his efforts on that endeavor. Under these circumstances, Jackson failed to demonstrate it was objectively unreasonable to decline to file a motion to suppress evidence.


In addition, the officer who applied for the search warrant testified at the evidentiary hearing that he did not include anything untrue or omit material facts when he sought the warrant. The record demonstrates that the officers approached the residence due to a call regarding the child's welfare, discovered a methamphetamine pipe when searching pursuant to Jackson's consent, and, following Jackson's withdrawal of consent, the child's mother advised the officers that Jackson had a substantial amount of drugs in a lockbox in a bedroom. The search warrant and accompanying affidavit contained this information. Under these circumstances, Jackson failed to demonstrate a reasonable probability of a different outcome had counsel sought to suppress evidence obtained pursuant to the search warrant. *See Keesee v. State*, 110 Nev. 997, 1001-02, 879 P.2d 63, 66-7 (1994) (defining probable cause to support

a search warrant). Therefore, we conclude the district court did not err in denying this claim.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Thomas L. Stockard, District Judge
Law Office of Patricia M. Erickson
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk