

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AURORA RODRIGUEZ-PEREZ,
Appellant,
vs.
WARDEN, F.M.W.C.C; AND THE
STATE OF NEVADA,
Respondents.

No. 70745

FILED

AUG 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Aurora Rodriguez-Perez appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Rodriguez-Perez argues the district court erred in denying her claims of ineffective assistance of counsel raised in her March 11, 2013, petition and October 14, 2015, supplement. To prove ineffective assistance of counsel, a petitioner must demonstrate 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, the outcome of the proceedings would have been different. *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*). Both components of the inquiry must be shown, *Strickland*, 466 U.S. at 697, and the petitioner must demonstrate the underlying facts by a preponderance of the evidence, *Means v. State*, 120 Nev. 1001, 1012,

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103 P.3d 25, 33 (2004). We give deference to the district 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, Rodriguez-Perez argued her counsel was ineffective for failing to present mitigation evidence at the sentencing hearing. Rodriguez-Perez asserted counsel should have presented mitigation evidence regarding her family life and education. Rodriguez-Perez further argued counsel should have explained she was a low-level participant in the crimes and should have prepared her to personally address the sentencing court. Rodriguez-Perez failed to demonstrate her counsel's performance was deficient or resulting prejudice.

At the evidentiary hearing, counsel testified he was aware of Rodriguez-Perez' circumstances prior to her participation in the crimes and concluded those issues were trivial compared to her actions which resulted in a murder. Counsel further testified he had discussed the facts of the crimes with Rodriguez-Perez and her statements to him demonstrated she was not a low-level participant in the crimes. Counsel also testified he explained to Rodriguez-Perez she had the opportunity to speak to the sentencing court, but he concluded after discussing the case with her that she would not help herself if she were to personally address the sentencing court. Counsel testified he focused on arguments which he believed had the best likelihood of success given the facts of this case and his experience. The district court concluded the evidence and testimony presented at the evidentiary hearing demonstrated counsel acted in an

objectively reasonable manner at the sentencing hearing. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989) (stating counsel's tactical decisions "are virtually unchallengeable absent extraordinary circumstances."). Substantial evidence supports this conclusion.


In addition, the record demonstrated Rodriguez-Perez was an active participant in the string of armed robberies, which culminated in the shooting-death of the victim. Moreover, the sentencing court credited Rodriguez-Perez with aiding the State against her codefendant and then imposed a sentence for the deadly-weapon enhancement that was shorter than the presentence investigation report recommended. Given these circumstances, Rodriguez-Perez failed to demonstrate a reasonable probability of a different outcome had counsel presented mitigation evidence, raised different arguments at the sentencing hearing, or prepared Rodriguez-Perez to make a statement to the sentencing court. Therefore, we conclude the district court did not err in denying this claim.


Second, Rodriguez-Perez argued her counsel was ineffective for failing to object to gender discrimination during the sentencing hearing, as the sentencing court held her status as a mother against her, but did not hold a codefendant's status as a father against that defendant. Rodriguez-Perez failed to demonstrate either prejudice or deficiency for this claim. Rodriguez-Perez did not question her counsel regarding this issue at the evidentiary hearing. As Rodriguez-Perez failed to pursue this claim at the evidentiary hearing, she did not meet her burden to demonstrate that counsel acted in a deficient manner with respect to this issue. *See Means*, 120 Nev. at 1012, 103 P.3d at 33 (explaining a

petitioner has the burden to establish the factual allegations underlying a claim of ineffective assistance of counsel); *see also Strickland*, 466 U.S. at 690 (recognizing “counsel is strongly presumed to have rendered adequate assistance”). Therefore, Rodriguez-Perez is not entitled to relief for this claim.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk