

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KAREN RENEE FURLOUGH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71138

FILED

JUL 12 2017

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

ORDER OF AFFIRMANCE

Karen Renee Furlough appeals from a district court order denying the postconviction petition for a writ of habeas corpus she filed on March 23, 2016.¹ Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Furlough claims the district court erred by denying her petition because she received ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, a petitioner must show (1) counsel's performance was deficient because it fell below an objective standard of reasonableness and (2) the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice sufficient to invalidate a judgment of conviction based on a guilty plea, the petitioner must show, but for trial counsel's errors, she would not have pleaded guilty and would have insisted on going to trial. *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the ineffective-assistance inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We review the

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).

district court's resolution of ineffective-assistance claims de novo, giving deference to the court's factual findings if they are supported by substantial evidence and not clearly wrong. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

First, Furlough claimed defense counsel was ineffective because he failed to communicate with her. The district court found Furlough's claim was a bare assertion and she failed to demonstrate she would not have pleaded guilty and would have insisted on going to trial if she had spent more time communicating with defense counsel. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude Furlough has not demonstrated defense counsel was ineffective in this regard. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984) (a petitioner is not entitled to postconviction relief if his claims are bare or belied by the record).

Second, Furlough claimed defense counsel was ineffective because he told her to accept the State's plea offer because he was afraid of the prosecutor who was assigned to her case. The district court found Furlough's claim was a bare assertion, she knowingly and voluntarily entered into her guilty plea, she thoroughly discussed the guilty plea agreement with defense counsel, she acknowledged that defense counsel had answered all of her questions and she was satisfied with his services, and she failed to demonstrate she was prejudiced by defense counsel's statement. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude Furlough has not demonstrated defense counsel was ineffective in this regard. *See id.*

Third, Furlough claimed defense counsel was ineffective for failing to respond to her letters inquiring about an appeal and discovery and, when defense counsel did respond, his letter contained misinformation regarding the appeal process. The district court found

defense counsel did not have a duty to inform Furlough of her right to an appeal, Furlough appears to have first inquired about an appeal after the deadline for filing an appeal had passed, and Furlough could not show she was prejudiced by misinformation in defense counsel's response because her letter to counsel was sent after the deadline for filing an appeal had passed. The district court further found Furlough failed to specify what discovery she received late or how she was prejudiced by the late discovery. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude Furlough has not demonstrated defense counsel was ineffective in this regard. See NRAP 4(b); *Toston v. State*, 127 Nev. 971, 977, 979-80, 267 P.3d 795, 799, 801 (2011).

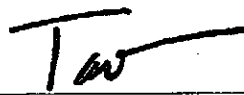
Fourth, Furlough claimed defense counsel was ineffective at sentencing for failing to object when the prosecutor misstated the evidence and facts of the case. The district court found Furlough's claim consisted of bare assertions, she failed to show the misstatements constituted highly suspect or impalpable evidence, and she failed to show the district court sentenced her based on these alleged misstatements. The district court also found defense counsel had focused his argument on trying to persuade the district court to follow the Division of Parole and Probation's sentencing recommendation, which was significantly lower than the prosecutor's sentencing recommendation. The district court's factual findings are supported by the record and are not clearly wrong, and we conclude Furlough has not demonstrated defense counsel was ineffective in this regard. See *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225; *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); see generally *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (observing counsel's decision if and when to object is a tactical decision); *Ford v. State*, 105 Nev. 850,

853, 784 P.2d 951, 953 (1989) (“Tactical decisions are virtually unchallengeable.”).

Based on our review of Furlough’s 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. ___, 391 P.3d 760 (2017); *Hargrove*, 100 Nev. at 502-03, 686 P.2d at 225. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Karen Renee Furlough
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk