

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BILLIEJO L. LANGE, A/K/A BILLIEJO  
MAXINE LANGE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71913

**FILED**

OCT 11 2017

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

*ORDER OF AFFIRMANCE*

Billiejo L. Lange appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus.<sup>1</sup> Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Lange argues the district court erred in denying her claims of ineffective assistance of counsel she raised in her August 24, 2016, petition. 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, 103 P.3d 25, 33 (2004).

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<sup>1</sup>This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

First, Lange argued her counsel was ineffective for failing to assert the State could not pursue a sentence under the habitual criminal enhancement. Lange asserted the State agreed not to seek that enhancement in exchange for her guilty plea. Lange failed to demonstrate her counsel's performance was deficient or resulting prejudice. In the written plea agreement, the State retained the right to seek the habitual criminal enhancement upon a showing of probable cause to support new criminal charges against Lange. While awaiting sentencing in this matter, Lange was arrested, charged with, and pleaded guilty to an offense relating to the sale of methamphetamine in Mesquite, and the State subsequently filed its notice of intent to seek punishment of Lange as a habitual criminal. Under these circumstances, Lange failed to demonstrate it was objectively unreasonable for her counsel to decline to argue the State was barred from pursuing the habitual criminal enhancement. Lange also failed to demonstrate a reasonable probability of a different outcome had counsel done so. Therefore, we conclude the district court did not err in denying this claim.<sup>2</sup>

Second, Lange argued her counsel was ineffective for failing to be prepared to represent her at the sentencing hearing, correct mistakes contained in the presentence investigation report (PSI), or request a shorter sentence. Lange failed to demonstrate her counsel's performance was deficient or resulting prejudice. Lange made only bare claims regarding

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<sup>2</sup>Lange also appears to challenge the separate case involving the Mesquite charges. We decline to consider any claims related to the separate case in this appeal because challenges to a separate judgment of conviction must be raised in a postconviction petition for a writ of habeas corpus referencing that district court case. See NRS 34.720(1); NRS 34.724(1); NRS 34.738(1). We express no opinion as to whether Lange could meet the procedural requirements of NRS Chapter 34 for any subsequent petition filed in the separate case.

these issues, provided no explanation as to how counsel should have performed differently with respect to these issues, and did not identify any errors contained within the PSI. Bare claims, such as these, are insufficient to demonstrate a petitioner is entitled to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

In addition, Lange's counsel filed a detailed sentencing memorandum containing specific information regarding Lange's criminal history, as well as her social, family, and economic background, indicating counsel had prepared for the sentencing hearing. Counsel also requested the district court to sentence Lange to a term of probation or to concurrent counts of 18 to 48 months in prison, but the district court chose to impose a sentence under the small habitual criminal enhancement. Under these circumstances, Lange failed to demonstrate a reasonable probability of a different outcome had counsel been further prepared or raised different arguments regarding Lange's sentence. Therefore, we conclude the district court did not err in denying this claim.

Third, Lange argued her counsel was ineffective for failing to pursue a direct appeal. Lange failed to demonstrate counsel's performance was deficient. Lange specifically waived her right to appeal the judgment of conviction in the written plea agreement. Therefore, we conclude the district court did not err in denying this claim.

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



\_\_\_\_\_, C.J.  
Silver



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



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

cc: Hon. Susan Johnson, District Judge  
Billiejo L. Lange  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk