


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH KIESHAWN GAINES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76968-COA

FILED

AUG 21 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Joseph Kieshawn Gaines appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 29, 2016, and a supplement filed on September 13, 2017. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

First, Gaines argues the district court erred by denying his claim that counsel was ineffective for failing to present the district court with mitigation evidence at sentencing. Specifically, he claims counsel should have provided the district court with information regarding his upbringing and the fact that he attempted to provide substantial assistance to law enforcement.

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). 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).


After holding an evidentiary hearing, the district court concluded counsel was deficient for failing to present this mitigation evidence at sentencing. Nevertheless, the district court concluded Gaines was not entitled to relief because Gaines failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented this information. Specifically, the district court found that the decision to sentence Gaines to 10 years to life in prison was based on his violent prior criminal history, and the fact that Gaines was not himself a user of heroin; instead, he was selling heroin to addicts with no regard to what impact the sale of that heroin would have on their lives. The record supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Second, Gaines argues the State breached the plea agreement at the evidentiary hearing by arguing in favor of the sentence imposed by the district court. Gaines misunderstands the State's argument at the evidentiary hearing. The State did not argue in favor of the sentence imposed by the district court. Rather, the State argued Gaines failed to demonstrate prejudice because he failed to demonstrate a reasonable probability of a different outcome at trial had counsel presented the mitigating evidence. This argument in response to Gaines' claim of

ineffective assistance of counsel did not constitute a breach of the plea agreement. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nathan Tod Young, District Judge
John E. Malone
Attorney General/Carson City
Douglas County District Attorney/Minden
Douglas County Clerk