

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DHYAALDAIN QARUAQOS DAWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70506

FILED

FEB 23 2017

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

ORDER OF AFFIRMANCE

Appellant Dhyaaldain Qaruaqos Dawood appeals from an order of the district court denying his January 16, 2016, postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

In his petition, Dawood claimed his counsel was ineffective. 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of 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).

inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, Dawood claimed his counsel was ineffective for failing to ensure an Arabic interpreter aided him during the plea canvass and for failing to ensure an interpreter read the written plea agreement to him in Arabic. Dawood failed to demonstrate his counsel's performance was deficient or resulting prejudice. Dawood's claim was belied by the record, which reveals an Arabic interpreter aided him during the plea canvass and Dawood stated at that hearing the Arabic interpreter had read him the written plea agreement in that language. Accordingly, Dawood failed to demonstrate his counsel acted in an objectively unreasonable manner or there was a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial. Therefore, we conclude the district court did not err in denying this claim.²

Second, Dawood claimed his counsel was ineffective for failing to investigate the case. Dawood asserted counsel could have discovered that his son was the person who had actually stabbed the victim in retaliation for her inappropriate text messages. Dawood failed to demonstrate his counsel's performance was deficient or resulting prejudice. "Where counsel and the client in a criminal case clearly understand the evidence and the permutations of proof and outcome,

²Dawood also appeared to assert counsel was ineffective for failing to speak Arabic. However, as the record revealed Dawood received the services of an Arabic interpreter, he failed to demonstrate counsel acted in a deficient manner in this regard or a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel spoken Arabic.

counsel is not required to unnecessarily exhaust all available public or private resources," in order to properly represent a defendant. *Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). The record reveals Dawood confessed to stabbing the victim and that the pertinent witnesses all informed authorities that Dawood stabbed the victim. Under these circumstances, Dawood failed to demonstrate objectively reasonable counsel would have undertaken additional investigation. Given Dawood's confession and the witness statements, he failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel undertaken further investigation. Therefore, we conclude the district court did not err in denying this claim.

Third, Dawood claimed his counsel was ineffective for failing to explain potential defenses to him in Arabic. Dawood failed to demonstrate counsel's performance was deficient or resulting prejudice. At the plea canvass, Dawood asserted he had discussed the written plea agreement with his attorney through the interpreter. Dawood further asserted that counsel had discussed the case with him and he had no questions regarding the case. Dawood also acknowledged in the written plea agreement that he had discussed any possible defenses with his counsel and still wished to enter a guilty plea. Under these circumstances, Dawood failed to demonstrate counsel acted in an objectively unreasonable manner or there was a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel further discussed potential defenses with him. Therefore, we conclude the district court did not err in denying this claim.

Fourth, Dawood claimed his counsel had a conflict of interest because he had a referral agreement with a bail bondsman. "Conflict of interest and divided loyalty situations can take many forms, and whether an actual conflict exists must be evaluated on the specific facts of each case. In general, a conflict exists when an attorney is placed in a situation conducive to divided loyalties." *Clark v. State*, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992) (quoting *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir. 1991)). A conflict of interest exists if "counsel 'actively represented conflicting interests'" and the "conflict of interest adversely affected [the defendant's] lawyer's performance." *Strickland*, 466 U.S. at 692 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 350, 348 (1980)).

We conclude Dawood failed to demonstrate an actual conflict of interest existed. Dawood alleged his bail bondsman referred him to his counsel, and that any arrangement the bail bondsman and his counsel had regarding referrals created a conflict of interest. However, even assuming counsel and the bail bondsman had a referral arrangement, this type of arrangement, without more, did not place counsel in a situation where counsel actively represented conflicted interests or that counsel was placed in a situation conducive to divided loyalties. As Dawood's allegation failed to demonstrate there was an actual conflict of interest, we conclude the district court did not err in denying this claim.

Fifth, Dawood claimed his counsel was ineffective for promising that Dawood would receive probation. Dawood failed to demonstrate his counsel's performance was deficient or resulting prejudice. Dawood's claim was belied by the record. In the written plea agreement, Dawood acknowledged that no one had promised or guaranteed he would receive a particular sentence. At the plea canvass,

Dawood further acknowledged he understood that no one could promise that he would receive probation. Therefore, we conclude the district court did not err in denying this claim.

Sixth, Dawood claimed his counsel was ineffective for failing to file a motion to withdraw his guilty plea. Dawood appeared to assert counsel should have moved to withdraw the guilty plea after Dawood did not receive probation. Dawood failed to demonstrate his counsel's performance was deficient or resulting prejudice. As previously stated, Dawood acknowledged he had not been promised probation. Dawood also acknowledged in the written plea agreement he understood his ultimate sentence would be determined by the district court. Because Dawood understood he may not receive probation and his sentence would be determined by the district court, Dawood did not demonstrate reasonable counsel would have filed a motion asserting withdrawal of Dawood's guilty plea was necessary to correct a manifest injustice. *See* NRS 176.165. Dawood also failed to demonstrate a reasonable likelihood of success had counsel moved to withdraw his guilty plea on this basis. Therefore, we conclude the district court did not err in denying this claim.


Seventh, Dawood claimed his counsel was ineffective for failing to advise him of his right to a direct appeal. Dawood failed to demonstrate he was improperly deprived of a direct appeal. The duty to inform or consult with a client with respect to appealing a judgment of conviction based on a guilty plea only arises "when the defendant inquires about the right to appeal or in circumstances where the defendant may benefit from receiving advice about the right to a direct appeal." *Toston v. State*, 127 Nev. 971, 977, 267 P.3d 795, 799 (2011). Dawood did not claim he inquired about his right to a direct appeal and he did not allege he

expressed the type of dissatisfaction which would have required counsel to file a notice of appeal. *See id.* at 978-79, 267 P.3d at 800- 01. Further, Dawood specifically waived his right to appeal in his guilty plea agreement and Dawood did not allege there were any circumstances in which he would have benefitted from receiving advice regarding a direct appeal. Therefore, we conclude the district court did not err in denying this claim.

Next, Dawood claimed he was improperly denied transcripts at state expense and he was improperly forced to retain counsel who did not speak Arabic. These claims were not based on an allegation that Dawood's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, were not permissible in a postconviction petition for a writ of habeas corpus stemming from a guilty plea. *See* NRS 34.810(1)(a). Therefore, the district court did not err in denying relief for these claims.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Stefany Miley, District Judge
Dhyaaldain Qaruaqos Dawood
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk