

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KENNETH LYN MORRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69463

FILED

JUN 21 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a timely postconviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Kenneth Morrell claims the district court erred in denying his habeas petition filed on August 3, 2015, in district court case number C297579 for the following reasons:

First, Morrell claims his guilty plea is invalid because it was coerced by the presentence investigation report's (PSI) prejudicial references to his prior arrests for attempted murder and sexual assault and by the district attorney's notice of intent to seek punishment pursuant to the habitual criminal statute.

"[G]uilty pleas are presumptively valid, especially when entered on advice of counsel, and a defendant has a heavy burden to show the district court that he did not enter his plea knowingly, intelligently, or voluntarily." *Molina v. State*, 120 Nev. 185, 190, 87 P.3d 533, 537 (2004). On appeal, we presume the district court correctly assessed the validity of

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

the plea and will not reverse its decision absent an abuse of discretion. *Id.* at 191, 87 P.3d at 538.

The district court found Morrell's claim was belied by the record. The record supports this finding. It demonstrates Morrell signed the plea agreement voluntarily, after consulting with his attorney, and was not acting under duress or coercion. And it also reveals Morrell entered his guilty plea *before* the PSI was ordered and produced. Accordingly, we conclude the district court did not abuse its discretion in this regard. *See Whitman v. Warden*, 90 Nev. 434, 436, 529 P.2d 792, 793 (1974) ("A guilty plea is not coerced merely because motivated by a desire to avoid the possibility of a higher penalty and this court has held that a plea motivated by the desire to avoid being charged under the habitual criminal act was not coerced." (internal citations omitted)).

Second, Morrell claims defense counsel was ineffective for not objecting to the uncharged offenses listed in the presentence investigation report (PSI).


To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate defense 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 that, but for counsel's errors, the outcome of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996) (adopting the *Strickland* test). To demonstrate prejudice sufficient to invalidate a judgment of conviction based on a guilty plea, the petitioner must show that, but for trial 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*, 112 Nev. at 988, 923 P.2d at 1107. Both components of the

inquiry—deficiency and prejudice—must be shown. *Strickland*, 466 U.S. at 697. We give deference to the 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).

The district court determined defense counsel did not provide ineffective assistance of counsel. The record does not suggest the information in the PSI was incorrect, impalpable, or highly suspect or that defense counsel’s performance was deficient. Accordingly, we conclude Morrell failed to prove the “factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence” and the district court did not err by rejecting this claim. *Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004); see NRS 176.145(1); *Ferris v. State*, 100 Nev. 162, 163, 677 P.2d 1006, 1066 (1984) (“[A] presentence report may include information pertaining to prior acts for which no conviction has been obtained, provided that the information is not founded on facts supported only by impalpable or highly suspect evidence.” (internal quotation marks omitted)).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Kenneth Lyn Morrell
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk