

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAUL FARVELA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70079

FILED

MAY 16 2017

CHRISTINA BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Saul Farvela appeals from an order of the district court denying the postconviction petition for a writ of habeas corpus he filed on December 18, 2013, and a supplemental petition filed on December 21, 2014. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

Farvela claims the district court erred by denying his claims of ineffective assistance of counsel. To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). To prove ineffective assistance of counsel at sentencing, 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. 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). To warrant an evidentiary hearing, a petitioner must allege specific facts not belied by the record that, if true, would entitle him to relief. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Farvela claimed counsel were ineffective for failing to inform the district court Farvela was suffering from depression and had been in the suicide unit of the jail three months before he entered his plea. Farvela claimed his mental health issues affected his comprehension at the time of the plea and therefore his plea was not knowingly, voluntarily, and intelligently entered.

Farvela failed to demonstrate counsel were deficient or resulting prejudice. Counsel informed the district court at the change of plea hearing that Farvela was suffering from depression. While counsel did not inform the district court of all of Farvela's mental health history during the canvass, counsel did inform the district court they had explored Farvela's mental health issues and found "there's nothing that [led them] to believe that he's anything but cogent and capable of understanding of what he's doing here today." Therefore, Farvela failed to demonstrate counsel was deficient at the change of plea hearing.

Farvela also failed to demonstrate resulting prejudice because he failed to demonstrate or even allege he would have refused to plead guilty and would have insisted on going to trial had counsel presented further evidence of his mental health history to the district court. Moreover, Farvela failed to demonstrate his plea was not knowingly,

voluntarily, and intelligently entered. *See Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); *see also Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994). The district court specifically found at the change of plea hearing that Farvela seemed completely cogent, appropriate, and unaffected by any medication. Further, the district court, in its order denying Farvela's petition, concluded that while there was evidence Farvela suffered from depression, "there is no evidence that it rendered Defendant incapable of understanding the nature and consequences of his plea." Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim without holding an evidentiary hearing.

Second, Farvela claimed counsel were ineffective for failing to file a motion to withdraw his plea. Specifically, he claimed counsel should have filed the motion based on his mental health issues. The district court concluded Farvela failed to demonstrate counsel were deficient or resulting prejudice. The district court found Farvela failed to demonstrate his mental health issues prevented him from understanding the proceedings and the consequences of the guilty plea and Farvela did not set forth a substantial, fair, and just reason for withdrawing the plea. Thus, the district court concluded counsel's decision not to file a motion to withdraw the guilty plea was objectively reasonable and Farvela could not demonstrate prejudice. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim without an evidentiary hearing.

Third, Farvela claimed counsel were ineffective for failing to raise Farvela's mental health issues at sentencing and for failing raise his mental health issues with Parole and Probation prior to the writing of his presentence investigation report (PSI). The district court concluded

Farvela failed to demonstrate counsel were deficient or resulting prejudice.

As to counsel's presentation at sentencing, the district court found counsel did discuss Farvela's mental health issues and informed the district court Farvela suffered from depression and anxiety. Counsel also made arguments regarding Farvela's childhood, his life accomplishments prior to his crimes, his substance abuse problems, and his completion of education and other programs while in jail. Thus, the district court determined Farvela's allegation that his counsel presented "little to no mitigating evidence" was belied by the record.

As to the PSI, the district court found it was not objectively unreasonable for counsel to not formally request to amend the PSI "to include information about [Farvela's] childhood or mental health issues because counsel presented this information extensively to the court."¹ Further the district court found Farvela "was not prejudiced because the sentencing court had all the information when determining his sentence."

Substantial evidence supports the findings of the district court, and we conclude Farvela failed to demonstrate the district court erred by denying these claims without holding an evidentiary hearing.

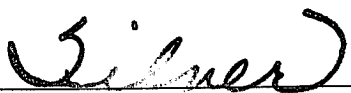
Finally, Farvela claimed counsel were ineffective for failing to file an appeal when requested to do so and for misinforming Farvela regarding his right to appeal. Specifically, he claims counsel told him they were only appointed to represent him at sentencing and Farvela did not have any legal grounds to appeal. Farvela also claims it should have been


¹We note Farvela failed to provide this court with a copy of the PSI. The burden is on Farvela to provide this court with pertinent portions of the record. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

assumed he was dissatisfied with his sentence because he received consecutive time when he asked for concurrent time.

Farvela failed to demonstrate he was improperly deprived of a direct appeal. When a defendant has pleaded guilty “trial counsel has a constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction.” *Toston v. State*, 127 Nev. 971, 978, 267 P.3d 795, 800 (2011). After holding an evidentiary hearing on Farvela’s appeal deprivation claim, the district court concluded there was “no credible evidence showing that Defendant requested an appeal be filed on his behalf and there are no grounds to grant a deprivation of appeal claim.” Substantial evidence supports the decision of the district court. We also conclude that, while Farvela expressed sadness regarding his sentence, Farvela failed to demonstrate he expressed dissatisfaction with his conviction sufficient to trigger counsel’s duty to file an appeal. Therefore, the district court did not err in denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Jennifer P. Togliatti, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk