

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY BARNES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69363

FILED

MAY 18 2016

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

ORDER OF AFFIRMANCE

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

Appellant Anthony Barnes argues the district court erred in denying the claims of ineffective assistance of counsel raised in his April 14, 2015, petition. 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, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984).

First, Barnes argues his counsel was ineffective for failing to assert there was insufficient evidence to show he caused the victim to have substantial bodily harm and to establish the corpus delicti of the crime.

Barnes fails to demonstrate his counsel's performance was deficient or resulting prejudice. Here, Barnes agreed to relieve the State of its burden of proving the elements of this offense beyond a reasonable doubt by entering his guilty plea, and therefore, he fails to demonstrate an objectively reasonable attorney would have made these assertions.


In addition, the record before this court reveals there was substantial evidence the child victim sustained numerous injuries as a result of the abuse committed by Barnes.¹ Barnes fails to demonstrate an objectively reasonable counsel would have asserted the injuries sustained by the then two-year-old victim did not amount to substantial bodily harm. See NRS 0.060 (defining substantial bodily harm); NRS 200.508(1); see also *Collins v. State*, 125 Nev. 60, 64, 203 P.3d 90, 93 (2009) (explaining that prolonged physical pain encompasses "physical suffering or injury that lasts longer than the pain immediately resulting from the wrongful act"). Further, Barnes fails to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel asserted there was insufficient evidence to show the victim sustained substantial bodily harm or to establish the corpus delicti of this crime. Therefore, the district court did not err in denying these claims.


Second, Barnes argues his counsel was ineffective for recommending Barnes sign the guilty plea agreement. Barnes fails to

¹The record before this court indicates the victim had swelling, bruising, and cuts on his face, torso, neck, and legs. Testing also revealed the victim had elevated liver enzymes, which indicated injury to his liver or spleen. In addition, the victim walked with a visible limp.

demonstrate either deficiency or prejudice for this claim. The record before this court reveals there was substantial evidence of Barnes' guilt, particularly in light of the numerous injuries to the two-year-old victim and Barnes' confession. Moreover, Barnes received a bargain by entry of his guilty plea, as one charge was dismissed. Accordingly, Barnes does not demonstrate it was objectively unreasonable for counsel to recommend to Barnes that he accept the State's plea offer. Barnes does not demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on going to trial had counsel given him different advice regarding the plea offer. Therefore, the district court did not err in denying this claim.

Having concluded Barnes 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
Law Office of Nadine M. Morton
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk