


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIA RODRIGUEZ-MORFIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77214-COA

FILED

OCT 16 2019

ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Maria Rodriguez-Morfin appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on June 2, 2015, a second postconviction petition for a writ of habeas corpus filed on February 6, 2017, and a supplemental petition filed on November 6, 2017.¹ Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Rodriguez-Morfin claims the district court erred by denying her ineffective-assistance-of-counsel claims. 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*,

¹The district court treated the second petition filed on February 6, 2017, as a petition amending the petition Rodriguez-Morfin filed on June 2, 2015.

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).

First, Rodriguez-Morfin claimed counsel was ineffective for failing to inform her of the right to appeal. When a conviction is the result of a jury trial, trial counsel has an affirmative duty to inform the defendant of the right to appeal, the procedures for filing an appeal, and the advantages and disadvantages of filing an appeal. *Lozada v. State*, 110 Nev. 349, 356, 871 P.2d 944, 948 (1994), *rejected on other grounds by Ripppo v. State*, 134 Nev. 411, 426 n.18, 423 P.3d 1084, 1100 n.18 (2018). Moreover, trial counsel "has a duty to perfect an appeal when a convicted defendant expresses a desire to appeal or indicates dissatisfaction with a conviction." *Id.* at 354, 871 P.2d at 947. Prejudice is presumed when counsel's "conduct completely denies a convicted defendant an appeal." *Id.* at 357, 871 P.2d at 949.

After hearing testimony at an evidentiary hearing, the district court found counsel discussed Rodriguez-Morfin's right to appeal with her several times, and told her about potential appealable issues. The district court also found Rodriguez-Morfin never informed counsel she wanted to appeal. Rodriguez-Morfin testified at the evidentiary hearing she knew how to get ahold of counsel. Accordingly, the district court concluded counsel was not deficient with regard to Rodriguez-Morfin's appeal rights. Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Second, Rodriguez-Morfin claimed counsel was ineffective for failing to file a motion to suppress. Specifically, she claimed the consent form did not inform her that a canine would be used in the search. Further, she claimed the officer did not explain the purpose of the search to her before seeking her consent.

When determining the scope of a search that is based on a suspect's consent, the district court must consider the totality of the circumstances and "whether an objectively reasonable officer would have believed that the scope of the suspect's consent permitted the action in question." *State v. Ruscetta*, 123 Nev. 299, 304, 163 P.3d 451, 454 (2007). "Relevant considerations with respect to the scope of consent include any express or implied limitations regarding the time, duration, area, or intensity of police activity to accomplish the stated purpose of the search, as well as the express object of the search." *Id.* at 302-03, 163 P.3d at 454 (internal quotation marks omitted). "A general consent to search is unqualified, absent any announcement of the object of the search or other express limitation, subject only to the bounds of reasonableness." *State v. Becerra*, 366 P.3d 567, 569 (Ariz. Ct. App. 2016); *see also Ruscetta*, 123 Nev. at 304 n.20, 163 P.3d at 454 n.20, *citing United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990) ("When an individual gives a general statement of consent without express limitations, the scope of permissible search is not limitless. Rather it is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass.").

After the evidentiary hearing, the district court found, based on her testimony and the officer's testimony, that Rodriguez-Morfin understood the contents of the consent form, its significance, and the

consequences of signing it. The consent form, which was provided in Spanish, informed her she could refuse to consent to the search and she did not have to sign it. Further, the consent form stated the officer could search and use tools to access compartments in the vehicle. Rodriguez-Morfin signed the consent form. The district court also found that Rodriguez-Morfin testified she saw the canine outside of the vehicle and did not object, and she testified she would not have objected because she had no concern with the dog searching the vehicle.

Based on this evidence, the district court concluded Rodriguez-Morfin validly consented to the search and did not limit the scope of the search. Further, the district court concluded the officer's use of the canine to search was within the bounds of reasonableness and within the scope of Rodriguez-Morfin's consent. Therefore, the district court concluded counsel was not deficient for failing to file a motion to suppress.² Substantial evidence supports the decision of the district court, and we conclude the district court did not err by denying this claim.

Finally, Rodriguez-Morfin claims the district court showed judicial bias against her which resulted in the district court improperly disregarding her testimony and influencing the district court's findings. Specifically, Rodriguez-Morfin claims the district court focused solely on whether she had the ability to understand and speak English which caused the district court to prejudge her credibility without giving any credence to her other testimony.


"[The] remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice

²We note that a search warrant was issued before any evidence was seized.

unless they show that the judge has closed his or her mind to the presentation of all the evidence.” *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). While the district court spent some time questioning the witnesses at the evidentiary hearing regarding Rodriguez-Morfin’s ability to speak English, these actions did not demonstrate the district court closed its mind to the presentation of all of the evidence. The totality of the district court’s questions, statements, and findings at the evidentiary hearing and the district court’s written findings, demonstrate the district court considered all of the evidence presented at the evidentiary hearing. Accordingly, Rodriguez-Morfin failed to demonstrate judicial bias.

Having found Rodriguez-Morfin is not entitled to relief, we
ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk