

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK LEONARD SHARP,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78240-COA

**FILED**

DEC 11 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Mark Leonard Sharp appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on August 18, 2015, and supplemental petition filed on January 29, 2018. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Sharp raised several claims of ineffective assistance of trial-level counsel. To demonstrate ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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), 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 that are supported by substantial evidence and not clearly wrong 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); see *Howard v. State*, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990) ("On matters of credibility this court will not reverse a trial court's finding absent a clear showing that the court reached the wrong conclusion."), *abrogated on other grounds by Harte v. State*, 116 Nev. 1054, 1072, 13 P.3d 420, 432 (2000).

First, Sharp claimed counsel were ineffective for coercing him into entering his guilty plea. Specifically, Sharp claimed counsel threatened to withdraw with only two weeks until jury trials began and counsel brought Sharp's brother in to pressure Sharp. The district court's finding that counsel were retained with the understanding that they would not represent Sharp at his trials was supported by the record. Further, Sharp has not made a clear showing that the district court reached the wrong conclusion when it found that Sharp's brother's testimony and affidavit were not credible. We thus defer to these findings. And Sharp's additional allegations—that counsel coerced his guilty plea by abandoning his pretrial petitions for a writ of habeas corpus and telling him he would be convicted at his trials and spend the rest of his life in prison—do not suggest coercion. *Cf. Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018) (noting that one of the roles of an attorney is to provide candid advice to his or her client). We therefore conclude the district court did not err by denying this claim.

Second, Sharp claimed counsel were ineffective for (1) failing to file a motion to suppress evidence due to defective search warrants and/or affidavits in support thereof, (2) assuring him the district court would be lenient if he pleaded guilty and liquidated all of his local assets in order to cut ties with the community, and (3) failing to understand the elements of the crimes. Despite conducting an evidentiary hearing, the district court made no findings as to these claims. Instead, the district court summarily denied the claims as outside the scope of claims permissible under NRS 34.810(1)(a).<sup>1</sup> The district court cites no authority—and we are aware of none—that so narrowly limits the scope of ineffective assistance claims arising out of a conviction pursuant to a guilty plea only to counsel’s actions during the guilty plea itself. Sharp’s allegations, if true, indicate counsel’s ineffective assistance could have impacted Sharp’s decision to enter a guilty plea, and his claims are thus within the scope of a postconviction habeas petition. We therefore conclude the district court erred by denying these claims. We reverse the district court’s denial of these claims and remand for the district court to resolve these claims on their merits.

Third, Sharp claimed counsel were ineffective for failing to establish an entrapment defense and failing to challenge long gaps in the evidence tape numbers, why evidence was not placed in the evidence vault, and the chain of custody of certain evidence. The presentation of defenses

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<sup>1</sup>NRS 34.810(1)(a) limits the claims in a postconviction petition for a writ of habeas corpus arising out of a judgment of conviction to claims “that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.”

and challenges to evidence occur at trial, but Sharp waived his right to trial when he pleaded guilty. Accordingly, Sharp failed to demonstrate counsel was deficient or that he was prejudiced by counsel's failure to engage in trial work. We therefore conclude the district court did not err by denying these claims.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Michael Montero, District Judge  
Mark Leonard Sharp  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk