


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SPRING MAY CUSTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 79495-COA

**FILED**

JUL 13 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Spring May Custer appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In her April 2, 2019, petition, Custer claimed she received ineffective assistance of counsel. 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must demonstrate 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*, 466 U.S. at 697.

First, Custer claimed her counsel was ineffective for failing to explain the consequences of her guilty plea and causing her to believe she would be sentenced to probation. Custer supported this claim with an email purportedly from counsel in which counsel told Custer that he believed she had a good chance of receiving probation. However, in the email, counsel did not provide any assurances or guarantee Custer would actually receive probation. Moreover, in the written plea agreement, Custer acknowledged that she understood the potential penalties she faced by entry of her guilty plea, she had not been promised or guaranteed a particular sentence, and she understood her ultimate sentence was to be determined by the sentencing court. In light of the record, Custer failed to demonstrate her counsel's performance fell below an objective standard of reasonableness or a reasonable probability she would have refused to plead guilty and would have insisted on proceeding to trial had counsel further discussed this issue with her. Therefore, we conclude the district court did not err by denying this claim.<sup>1</sup>

Second, Custer claimed that her counsel was ineffective at the sentencing hearing for failing to request that she be placed in a diversionary program to treat her gambling addiction and for failing to challenge the restitution amount. In the written plea agreement, Custer specifically agreed that she would not request placement in a diversionary program and she stipulated to restitution in the amount of \$121,162. Given the written plea agreement, Custer failed to demonstrate her counsel's performance at

---


<sup>1</sup>To the extent Custer asserted her guilty plea was invalid because she believed she would be placed on probation, Custer failed to demonstrate withdrawal of her guilty plea was necessary to correct a manifest injustice. See NRS 176.165.

the sentencing hearing fell below an objectively reasonable standard or a reasonable probability of a different outcome had counsel challenged these issues during the sentencing hearing. Therefore, we conclude the district court did not err by denying this claim.

Third, Custer claimed her counsel was ineffective for failing to investigate the victim's criminal history, her gambling issues, and her status as a veteran. Custer also claimed her counsel was ineffective for permitting a different attorney to work on her case. Custer failed to allege how any lack of investigation affected her decision to enter a guilty plea. Custer also did not explain how her counsel's decision to permit another attorney on her case bore upon her decision to enter a guilty plea. Custer did not support these claims with specific factual allegations that if true would demonstrate she was entitled to relief. Accordingly, we conclude the district court did not err by denying these claims. *See Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

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

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

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

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

cc: Hon. Mary Kay Holthus, District Judge  
Spring May Custer  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk