

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CORRY ALEXIS HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79366-COA

FILED

JUL 13 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Corry Alexis Hawkins appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Hawkins argues the district court erred by denying the claims of ineffective assistance of counsel he raised in his April 4, 2018, petition and later-filed supplement. 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, 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, Hawkins claimed his counsel was ineffective for failing to investigate a codefendant to ascertain her potential testimony so as to advise Hawkins regarding entry of a guilty plea. Hawkins also contended he was coerced into pleading guilty due to counsel's deficient investigation into his codefendant's potential testimony. In addition, Hawkins claimed his counsel was ineffective for failing to provide him with discovery prior to entry of his plea.

Hawkins raised these issues in a presentence motion to withdraw his guilty plea, the trial-level court conducted an evidentiary hearing concerning these issues, and denied the motion. Hawkins challenged the trial-level court's decision to deny these claims on direct appeal and this court affirmed the decision of the district court because Hawkins failed to demonstrate his counsel was ineffective. *Hawkins v. State*, Docket No. 71590-COA (Order of Affirmance, December 28, 2017). Because these claims have already been considered and rejected by this court, the doctrine of the law of the case prevents further consideration of these claims. See *Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99

(1975). Therefore, we conclude the district court did not err by denying these claims.

Second, Hawkins claimed his counsel was ineffective for failing to investigate his codefendant and utilize the information obtained through the investigation in support of his motion to withdraw guilty plea. The district court reviewed the transcript of the evidentiary hearing held on Hawkins' motion to withdraw guilty plea and found that the evidence presented during the hearing demonstrated counsel conducted an adequate investigation concerning the codefendant. Substantial evidence supports the district court's finding. Hawkins failed to demonstrate his counsel's performance fell below an objectively reasonable standard or a reasonable probability of a different outcome had counsel further investigated the codefendant. Therefore, we conclude the district court did not err by denying this claim.

Third, Hawkins claimed that his counsel was ineffective for failing to adequately present mitigation evidence at the sentencing hearing. Hawkins asserted his counsel should have presented evidence concerning his difficult childhood, mental health issues, substance abuse, and juvenile record. Hawkins also contends that counsel should have argued that he was not the person that shot the victim. The district court reviewed the sentencing hearing and found Hawkins' claims lacked merit because counsel raised these issues during that hearing. Substantial evidence supports the district court's findings. Hawkins failed to demonstrate his counsel's performance fell below an objectively reasonable standard or a reasonable probability of a different outcome had counsel presented

additional similar information at the sentencing hearing. Therefore, we conclude the district court did not err by denying this claim.

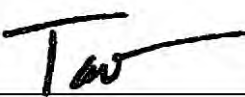
Next, Hawkins argues that the district court erred by denying his claims of ineffective assistance of appellate counsel. To prove ineffective assistance of appellate counsel, a petitioner must demonstrate that counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that the omitted issue would have a reasonable probability of success on appeal. *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1113-14 (1996). Appellate counsel is not required to raise every non-frivolous issue on appeal. *Jones v. Barnes*, 463 U.S. 745, 751 (1983). Rather, appellate counsel will be most effective when every conceivable issue is not raised on appeal. *Ford v. State*, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). Both components of the inquiry must be shown. *Strickland*, 466 U.S. at 697. 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* 121 Nev. at 686, 120 P.3d at 1166.

Hawkins claimed his appellate counsel was ineffective for failing to investigate the codefendant and properly argue on direct appeal that his guilty plea was involuntary and coerced because he lacked access to information concerning his codefendant's out-of-court statements and potential testimony. As explained previously, Hawkins asserted on direct appeal that his counsel's failure to investigate the potential testimony of the codefendant caused his guilty plea to be invalid. *Hawkins v. State*, Docket No. 71590-COA (Order of Affirmance, December 28, 2017). As counsel

raised the underlying issue on direct appeal, Hawkins failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. To the extent Hawkins asserted counsel should have raised these claims in a different manner, Hawkins failed to demonstrate a reasonable likelihood of success had counsel presented the underlying issues differently. Therefore, we conclude the district court did not err by denying these claims.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Douglas W. Herndon, District Judge
Resch Law, PLLC dba Conviction Solutions
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk