

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AMADEO SANCHEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79262-COA

FILED

OCT 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

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

Amadeo Sanchez, Jr., appeals from orders of the district court dismissing in part and denying in part the postconviction petition for a writ of habeas corpus filed on May 16, 2017, and a supplemental postconviction petition for a writ of habeas corpus filed on April 30, 2018. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Sanchez argues the district court erred by denying his claims of ineffective assistance of counsel. To demonstrate ineffective assistance of trial counsel, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that there was a reasonable probability of a different outcome absent counsel's errors. *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*, 466 U.S. at 687, 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). To warrant an evidentiary hearing, petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Sanchez claimed counsel was ineffective for failing to give him advice regarding a plea offer and for telling him he had a strong claim of self-defense. Sanchez argues that counsel's failure to specifically advise him whether or not to take the plea offer was akin to counseling Sanchez to reject a favorable offer like in *Lafler v. Cooper*, 566 U.S. 156 (2012).

If a plea bargain has been offered, a defendant has the right to effective assistance in considering whether to accept it. *Lafler*, 566 U.S. at 168. The district court held an evidentiary hearing on this claim. The district court found that counsel advised Sanchez about the terms of the negotiations, the differences in potential sentences between first- and second-degree murder, and the potential consequences of accepting or rejecting the negotiation. Further, the district court found counsel did not inform Sanchez he had a strong claim of self-defense. Finally, the district court found counsel was more credible than Sanchez. Therefore, the district court concluded that counsel was not deficient because counsel fully informed Sanchez regarding the plea negotiations and left Sanchez to decide whether to accept the offer based on that information.

Substantial evidence supports the findings of the district court, and they are not clearly erroneous. Counsel was not deficient for fully informing Sanchez regarding the plea and letting Sanchez decide whether

to take the deal. We reject Sanchez's claim that failing to specifically advise a defendant to take or reject an offer is the same as the situation in *Lafler*, where counsel told a defendant to reject an offer based on counsel's misunderstanding of the law. *See id.* at 161-62. Accordingly, we conclude the district court did not err by denying this claim.

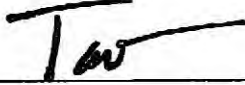
Second, Sanchez claimed counsel was ineffective for failing to have the first aid kit located and tested for forensic evidence. While an officer testified to seeing one at the scene, a first aid kit was not collected from the scene. Sanchez failed to demonstrate counsel was deficient for failing to have the first aid kit tested, because it was never available for testing. Therefore, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Sanchez claimed counsel was ineffective for failing to have firearm evidence tested. Sanchez's trial defense was that he shot the victim in self defense and, after the shooting, the witness moved the victim's gun to another room. Sanchez claimed counsel should have had a red substance collected from the victim's gun tested to see if it was the victim's blood. Further, Sanchez claimed counsel should have had the live round of ammunition found at the scene of the shooting tested to see if it matched ammunition used in the victim's gun. If the red mark on the trigger of the gun was blood from the victim and the live round of ammunition matched the gun, it would have supported Sanchez's claim that he acted in self-defense. The evidence also would have undermined the credibility of the witness who was in the home when the shooting occurred. These claims were supported by specific factual allegations that are not belied by the record and, if true, would entitle Sanchez to relief. Therefore, the district

court should have held an evidentiary hearing on these claims. Accordingly,
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. Scott N. Freeman, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk