

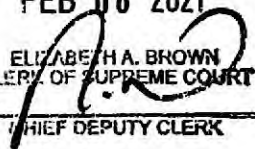
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TARRON FOSTER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80354-COA

FILED

FEB 08 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Tarron Foster appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Foster argues the district court erred by denying the claims of ineffective assistance of counsel raised in his April 4, 2018, petition and later-filed supplement. To demonstrate ineffective assistance of 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*). To demonstrate prejudice regarding the decision to enter a guilty plea, a petitioner must show a reasonable probability that, 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 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).

First, Foster claimed that his counsel was ineffective for failing to communicate with him. Foster asserted his counsel failed to review the case with him, properly explain the plea agreement, and properly explain the potential sentences he faced if he entered a guilty plea. At the evidentiary hearing, counsel testified that he met with Foster on multiple occasions and their discussions focused on plea bargaining because Foster had confessed to committing the crimes. Counsel also testified that he reviewed the plea agreement with Foster and explained the potential penalties Foster faced by entry of a guilty plea. Counsel further testified that he did not promise that Foster would receive any particular sentence. The district court found counsel's testimony was credible and substantial evidence supports that finding. Foster thus failed to demonstrate his counsel's performance fell below an objective standard of reasonableness or a reasonable probability he would have refused to plead guilty and insisted on proceeding to trial had counsel communicated with Foster in a different manner. Therefore, we conclude the district court did not err by denying this claim.

Second, Foster claimed that his counsel was ineffective for failing to conduct an adequate pretrial investigation. At the evidentiary hearing, counsel testified that he was fully prepared for a trial, but that Foster wished to reach a plea agreement from the beginning of the case because he had confessed to committing the crimes. The district court found

counsel's testimony was credible and substantial evidence supports that finding. In light of the circumstances of this case, Foster failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Moreover, Foster did not demonstrate that counsel would have uncovered any favorable evidence through an investigation and, thus, failed to demonstrate a reasonable probability of a different outcome had counsel performed differently. Therefore, we conclude the district court did not err by denying this claim.

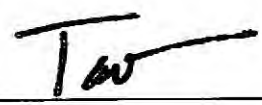
Third, Foster claimed his counsel was ineffective at the sentencing hearing for failing to communicate with him in preparation for that hearing and failing to present mitigation evidence concerning his background and positive aspects of his life. At the evidentiary hearing, counsel testified that he explained to Foster that he should not expect a lenient sentence given the facts of the case. At the sentencing hearing, counsel had urged the sentencing court to consider Foster's age and his willingness to accept responsibility before it imposed sentence. In light of counsel's testimony at the evidentiary hearing and counsel's argument at the sentencing hearing, Foster failed to demonstrate counsel's performance fell below an objective standard of reasonableness. In his supplemental petition, Foster also acknowledged that the presentence investigation report informed the sentencing court regarding his childhood, his mental health issues, and his family situation. Foster failed to demonstrate a reasonable probability of a different outcome at the sentencing hearing had counsel presented additional information of a similar nature. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Foster claimed he was entitled to relief due to the cumulative effect of counsel's errors. However, even assuming multiple

deficiencies in counsel's performance may be cumulated to find prejudice under the *Strickland* test, see *McConnell v. State*, 125 Nev. 243, 259 n.17, 212 P.3d 307, 318 n.17 (2009), there was nothing to cumulate because Foster failed to demonstrate any such deficiencies. Therefore, the district court did not err by denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

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

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

cc: Hon. Michael Villani, District Judge  
Waldo Law, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk