

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SCOTT ALLEN DIETER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80296-COA

FILED

FEB 25 2021

ELIZABETH A. DEAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Scott Allen Dieter appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus filed on July 23, 2018, and supplements filed on February 22, 2019, and August 5, 2019. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Dieter argues the district court erred by dismissing his claims that his counsel was ineffective without conducting an evidentiary hearing. To demonstrate ineffective assistance of defense 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. 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, a 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, Dieter claimed counsel was ineffective for failing to move to continue sentencing and failing to present testimony at the sentencing hearing regarding Dieter's progress at the treatment center. Counsel did request to continue the hearing. Further, the sentencing court acknowledged that Dieter was compliant with his treatment program at sentencing and commended Dieter's progress. The sentencing court's decision to sentence Dieter to prison rather than to place him on probation and allow him to continue his treatment program was based on the fact that Dieter lied to the sentencing court at the previous sentencing hearing. Therefore, Dieter failed to demonstrate a reasonable probability of a different outcome had counsel presented testimony regarding his progress. Accordingly, we conclude the district court did not err by dismissing this claim without first conducting an evidentiary hearing.

Second, Dieter claimed counsel was ineffective for failing to inform the sentencing court that the guns found in his home were "toy guns." At the second sentencing hearing, the sentencing court was informed that Dieter had several air guns in his home and that these were not prohibited guns. Further, the sentencing court acknowledged that Dieter was allowed to possess this type of gun. Therefore, Dieter failed to demonstrate counsel was deficient or a reasonable probability of a different

outcome had counsel presented further information regarding the guns. Accordingly, we conclude the district court did not err by dismissing this claim without first conducting an evidentiary hearing.

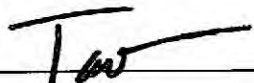
Third, Dieter claimed counsel was ineffective for failing to explain to the sentencing court the circumstances surrounding the plea agreement. Specifically, he claimed the sentencing court erroneously believed the State had dismissed 18 charges in exchange for his plea. Dieter argued the State never actually charged him with 18 offenses. The district court was informed by the State that Dieter was never charged with 18 offenses. Further, the sentencing court's decision was not based on dismissed offenses. Instead, the sentencing court based its decision on the fact that Dieter lied to the sentencing court at the previous sentencing hearing. Therefore, we conclude Dieter failed to demonstrate a reasonable probability of a different outcome at sentencing had counsel presented further information regarding the plea agreement. Accordingly, we conclude the district court did not err by dismissing this claim without first conducting an evidentiary hearing.

Finally, Dieter claimed counsel was ineffective for failing to dispute the district court's statement that he had 10 prior felony convictions. While Dieter had only four prior judgments of convictions that qualified him for habitual treatment, those four prior judgments of conviction contained 10 felony convictions. Therefore, the district court was correct when it stated he had 10 prior felony convictions. Further, as stated above, the sentencing court's decision to sentence Dieter to prison was based on the fact that Dieter lied to the sentencing court at the previous

sentencing hearing. Therefore, Dieter failed to demonstrate a reasonable probability of a different outcome had counsel objected to the sentencing court's statement. Accordingly, we conclude the district court did not err by dismissing this claim without first conducting an evidentiary hearing.

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Law Offices of Lyn E. Beggs, PLLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk