

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAHTIJERA V. HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82142-COA

FILED

JUL 12 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lahtijera V. Howard appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 26, 2018, and supplement filed on February 11, 2019. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Howard contends the district court erred by denying her claims of ineffective assistance of trial-level counsel at the sentencing hearing. 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).

First, Howard argued counsel should have presented a neuropsychological report as mitigation evidence at sentencing. Howard claimed the sentencing court based Howard's sentence largely on her having left the scene of the crime but the report would have demonstrated her leaving was due to her mental health issues. The district court found that counsel did inform the sentencing court that Howard had mental health issues as well as other mitigating factors. The district court also found that the sentencing court acknowledged Howard's mental health issues. These findings are supported by substantial evidence in the record. Because the sentencing court was aware that Howard had mental health issues, Howard failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Further, while the sentencing court mentioned Howard leaving the scene of the crime, the court's focus was on Howard's subsequent report to police, falsely claiming that the victim was abusing her when he was in fact already dead. Howard thus failed to demonstrate a reasonable probability of a different outcome had counsel presented additional evidence of Howard's mental health issues. Therefore, we conclude the district court did not err by denying this claim.

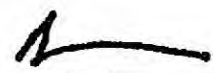
Second, Howard argued counsel failed to effectively rebut the State's assertion that the victim had a peaceful character. Counsel filed a sentencing memorandum that included significant details about previous instances of domestic violence committed by the victim against Howard as well as statements from witnesses regarding an incident where the victim hit multiple people in his apartment complex. Additionally, the sentencing memorandum included a custody report noting multiple domestic violence

incidents between the victim and Howard and how the victim previously deliberately misinformed authorities. At the evidentiary hearing on this petition, counsel testified that she made it a point to include the custody report and reference it multiple times during the sentencing hearing. The foregoing facts demonstrate counsel presented the sentencing court with mitigating evidence rebutting the State's characterization of the victim as having a peaceful character. Howard thus failed to demonstrate counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel presented the evidence in a different manner. Therefore, we conclude the district court did not err by denying this claim, and we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Brian S. Rutledge
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk