

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDDIE SOWELL SMITH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83194-COA

FILED

JAN 11 2022

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

ORDER OF AFFIRMANCE

Eddie Sowell Smith appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on January 5, 2021, and an amended petition filed on February 18, 2021. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Smith claims the district court erred by denying his claim of ineffective assistance of defense counsel. 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—deficiency and

prejudice—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).

Smith claimed counsel was ineffective for allowing the State to change Smith’s misdemeanor offenses into felonies. Smith was initially charged in the justice court with a felony (battery with the use of a deadly weapon resulting in substantial bodily harm of C. Hines) and two misdemeanors (battery of R. Palmer and D. Williams). Following a preliminary hearing, the misdemeanors were severed from the felony, and Smith was bound over on two felonies committed against C. Hines. Smith faced possible sentences of up to 6 months each for the misdemeanors, *see* NRS 193.150(1); 1 to 6 years for battery resulting in substantial bodily harm constituting domestic violence, *see* NRS 200.485(5); and 2 to 15 years for battery with the use of a deadly weapon resulting in substantial bodily harm, *see* NRS 200.481(2)(e)(2).

Counsel negotiated a global plea agreement for the felony and misdemeanor cases whereby Smith agreed to plead guilty to two counts of attempted battery resulting in substantial bodily harm: one involving C. Hines and the other involving R. Palmer and/or D. Williams.¹ The offenses could be sentenced as either a gross misdemeanor carrying a sentence of not more than 364 days in jail, *see* NRS 193.140, or a felony carrying a sentencing range of one to four years. *See* NRS 193.130(2)(d); NRS 193.330(1)(a)(4); NRS 200.481(2)(b). Thus, the plea agreement allowed

¹Smith waived any pleading defects in his plea agreement.

Smith to plead guilty to two counts that had the potential to be adjudicated as gross misdemeanors and, at worst, would subject him to a maximum of eight years in prison. In contrast, had Smith been convicted of the two felonies for which he had been bound over, he would have faced a maximum sentence of up to 21 years in prison. Moreover, the district court found that, by entering the plea, Smith avoided possible habitual criminal treatment, and this finding is supported by substantial evidence in the record. In light of the apparent benefits of the negotiated agreement, Smith failed to demonstrate counsel's performance was deficient or a reasonable probability he would not have pleaded guilty and would have insisted on going to trial if not for counsel's alleged errors. Thus, we conclude 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. Tara D. Clark Newberry, District Judge
Eddie Sowell Smith
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk