

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EBONI SHAJUANA COCKERHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82635-COA

FILED

DEC 29 2021

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

ORDER OF AFFIRMANCE

Eboni Shajuana Cockerham appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Cockerham argues the district court erred by denying the claims of ineffective assistance of counsel raised in her January 16, 2020, 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—deficiency and prejudice—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, Cockerham argued her counsel was ineffective for failing to ensure that she was taking her mental health medication when she entered her guilty plea. Cockerham asserted that she was unable to understand her guilty plea proceedings because she had not taken her medication.

At the evidentiary hearing on Cockerham's petition, counsel testified that he reviewed the plea agreement with Cockerham and she informed him that she understood the agreement. Counsel testified he spoke with Cockerham prior to the plea canvass and, as a result of the conversation, he had no concerns regarding her lucidity during the plea canvass. In addition, at the plea canvass Cockerham informed the trial-level court that she was taking her prescription medications, she reviewed the written plea agreement with counsel, and counsel answered all of her questions concerning the agreement. Cockerham also informed the trial-level court at the plea canvass that she understood the waiver of rights and the consequences she faced from entry of a guilty plea. In light of counsel's testimony at the evidentiary hearing and the record concerning entry of her guilty plea, Cockerham failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Cockerham also failed to demonstrate a reasonable probability she would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed

different actions. Therefore, we conclude the district court did not err by denying this claim.

Second, Cockerham argued her counsel was ineffective for failing to retain an investigator to investigate the case or interview witnesses. At the evidentiary hearing, counsel testified that, following the preliminary hearing, the parties decided to resolve the matter so that Cockerham's son would not have to testify at any other hearings. Counsel testified that the parties ultimately reached such an agreement and, therefore, counsel did not attempt to hire an investigator for this case. Counsel also testified that Cockerham received a substantial benefit by accepting the State's plea offer because her potential sentences were substantially reduced. We conclude that counsel understood the nature of the case and made reasonable, professional decisions as to the extent of the investigations that were appropriate in this matter. *See Strickland*, 466 U.S. at 691 ("[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Cockerham failed to demonstrate counsel's performance fell below an objective standard of reasonableness. Cockerham also failed to demonstrate a reasonable probability she would have refused to plead guilty and would have insisted on proceeding to trial had counsel retained an investigator for this matter. Therefore, we conclude the district court did not err by denying this claim.

Third, Cockerham argued her counsel was ineffective for failing to ensure that she was prepared for the sentencing hearing. Cockerham contended she did not review the presentence investigation report (PSI) and was not able to comprehend the hearing due to her mental health issues. At the evidentiary hearing, counsel testified that he spoke with Cockerham

concerning the sentencing hearing and reviewed the PSI with her. Counsel testified that he answered any questions Cockerham had about the PSI. Counsel also stated that Cockerham did not give him any reason to believe that she was incompetent at that time or did not understand the sentencing proceedings. In light of counsel's testimony and the record concerning the sentencing hearing, Cockerham did not demonstrate her counsel's performance fell below an objective standard of reasonableness or a reasonable probability of a different outcome had counsel performed different actions. Therefore, we conclude the district court did not err by denying this claim.

Fourth, Cockerham argued her counsel was ineffective for permitting her to be sentenced even though the PSI was prepared without her input. At the evidentiary hearing, counsel testified that he knew that Cockerham did not participate in an interview for preparation of the PSI but that situation is relatively common in his experience. Counsel also testified that the plea agreement permitted the State to argue for any legal sentence if Cockerham failed to participate in the PSI interview but that the State nevertheless agreed to jointly recommend probation with a mental health diversion program despite Cockerham's failure to participate in the interview. Counsel thus did not move to continue the sentencing hearing or otherwise argue that the sentencing hearing should not proceed until Cockerham provided input for the PSI.

In light of the testimony produced at the evidentiary hearing, Cockerham failed to meet her burden to demonstrate that her counsel's performance fell below an objective standard of reasonableness. Cockerham also failed to demonstrate a reasonable probability of a different outcome had counsel performed different actions after Cockerham did not participate

in the PSI interview. Therefore, 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. Robert W. Lane, District Judge
David H. Neely, III
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk