

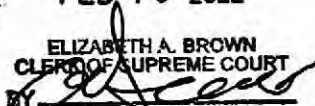
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GERALD KATWANE ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82567-COA

FILED

FEB 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gerald Katwane Allen 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.

Allen argues the district court erred by denying his May 1, 2019, petition and later-filed supplement. In his petition, Allen claimed that his counsel was ineffective. To demonstrate ineffective assistance of defense counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability 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, 987-88, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown, *Strickland v. Washington*, 466 U.S. 668, 687 (1984), 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 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).

Allen claimed his counsel was ineffective for failing to adequately investigate and prepare a defense. Allen contended he was authorized to enter the victim's residence by Allen's significant other, who was also a resident. Allen also asserted that the victim fired the first shot, the victim tried to hide his firearm after the shooting, and the victim used cocaine prior to the shooting. Allen claimed counsel could have discovered those facts and prepared to present that information at trial to support Allen's assertion that he lacked the intent to commit burglary and that he acted in self-defense.

At the evidentiary hearing, counsel testified that he investigated whether Allen had permission to be inside of the residence and discussed that issue with Allen and Allen's significant other. Counsel testified that the authorization to enter a residence is not a complete defense to burglary and, therefore, he did not feel it was an important issue for Allen's case. Counsel also testified that Allen informed him that the victim fired the first shot and of his belief that the victim was under the influence of cocaine. Counsel testified that, after his investigation and review of the facts of this case, he discussed potential defenses with Allen. Counsel testified that he and Allen discussed pursuit of a self-defense theory at length. Counsel testified that he was concerned such a defense would not be successful based on Allen's statements that he went to the residence to confront the victim and because Allen armed himself with a firearm during the confrontation with the victim.

In addition, counsel testified that, after he and Allen reviewed the facts concerning the incident, Allen concluded that entry of a guilty plea

was in his best interest as compared to the potential penalties he faced were he to proceed to trial. Counsel also testified that he and Allen discussed whether to request funds from the district court to permit them to retain an investigator but that Allen accepted the plea offer before that became necessary.

The district court found that counsel's testimony was credible and substantial evidence supports that decision. In light of the testimony presented at the evidentiary hearing, counsel's investigation and preparation were reasonable under the circumstances of this case. Thus, Allen failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. *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."). Allen also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel performed additional investigation or preparation in this matter. 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. Michael Villani, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk