

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN DEANDRE PROCTOR, A/K/A
STEVEN R. PROCTOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84396-COA

FILED

NOV 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

Steven Deandre Proctor appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on September 16, 2021. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

In his petition, Proctor argued that his counsel was ineffective. 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 sufficient to invalidate a guilty plea, a petitioner must demonstrate that, but for counsel's errors, there is a reasonable probability the 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).

First, Proctor claimed that counsel was ineffective at the entry-of-plea stage because counsel told Proctor that Proctor would not get probation in this case. Candid advice about the possible outcome of the sentencing hearing is not evidence of deficient performance. See *Dezzani v. Kern & Assocs., Ltd.*, 134 Nev. 61, 69, 412 P.3d 56, 62 (2018). Further, Proctor did not contend that he would not have pleaded guilty and would have insisted on going to trial had counsel not given this advice. Accordingly, we conclude the district court did not err by denying this claim.

Second, Proctor claimed that counsel was ineffective for failing to argue that the probation revocation procedures were not followed because there was no preliminary inquiry and he did not receive a copy of the violation report. Based on the record before this court, it is not clear whether Proctor received a preliminary inquiry or a copy of the violation report. However, even assuming there was no preliminary inquiry and Proctor did not receive a copy of the notice of violation, Proctor failed to allege how the outcome of the hearing would have been different had counsel objected. Therefore, we conclude the district court did not err by denying this claim.

Third, Proctor claimed that counsel was ineffective through the course of the probation revocation proceedings for telling him it was mandatory that he be reinstated to probation because he pleaded guilty to a misdemeanor in his other case. Proctor failed to allege how the outcome of the hearing would have been different had counsel not told him he would

be reinstated to probation. Accordingly, we conclude the district court did not err by denying this claim.

Fourth, Proctor claimed that counsel was ineffective for failing to file an appeal after the probation revocation proceedings and after being requested to do so. The district court denied this claim because it found that Proctor raised the appeal-deprivation claim in regard to a different conviction. The record does not support this finding. Rather, Proctor's pleading raises this claim in regard to the instant conviction. Therefore, we conclude the district court erred.

Proctor claimed he asked counsel to file an appeal and counsel failed to do so. This claim was not belied by the record and, if true, would entitle him to relief. *See Toston v. State*, 127 Nev. 971, 976, 978, 267 P.3d 795, 799, 800 (2011) (holding that counsel must file an appeal when asked to do so and that prejudice is presumed if counsel does not then do so). Therefore, we conclude Proctor was entitled to an evidentiary hearing on this claim, *see Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984), and we order the district court to conduct such a hearing upon remand.

Fifth, Proctor claimed that the probation revocation procedures were not followed, he was only given five minutes before the revocation hearing to review the violation report, and the new probation rules made it mandatory that he be reinstated to probation because he was only convicted of a misdemeanor.¹ These claims were not properly raised in a

¹After being placed on probation, Proctor was arrested for committing a new felony. That arrest was the basis for the violation report in this case. Proctor pleaded guilty to a misdemeanor in that case prior to the probation revocation hearing.

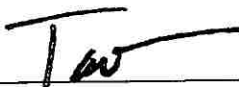
postconviction petition for a writ of habeas corpus because they could have been raised on direct appeal from the entry of his amended judgment of conviction. See *Franklin v. State*, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994) (“[C]laims that are appropriate for a direct appeal must be pursued on direct appeal, or they will be considered waived in subsequent proceedings.”), *overruled on other grounds by Thomas v. State*, 115 Nev. 148, 979 P.2d 222 (1999). Accordingly, we conclude the district court did not err by denying this claim.

Finally, to the extent that Proctor’s claims challenged the entry of his plea in a different case, those claims were improperly included in Proctor’s petition filed in this case, and we decline to address them.

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Steven Deandre Proctor
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk