

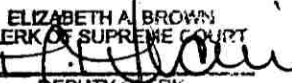
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARON BRADLEY LASYONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84591-COA

FILED

MAY 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Aaron Bradley Lasyone appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus filed on July 8, 2021, and a supplemental petition filed on December 31, 2021. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Lasyone argues the district court erred by denying his claims of ineffective assistance of counsel without conducting an evidentiary hearing. 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*). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

To warrant an evidentiary hearing, a petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984). 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, Lasyone claimed trial-level counsel was ineffective for failing to meaningfully argue mitigating circumstances at sentencing. In particular, Lasyone contended that counsel failed to meaningfully argue that Lasyone suffered from significant mental health problems and that he failed to appear at his initial sentencing hearing and at a subsequent status check hearing due to a car accident and his mental health problems.

The district court determined that counsel had meaningfully argued these mitigating circumstances at sentencing. The district court's determination is supported by substantial evidence in the record. Counsel argued that (1) Lasyone failed to appear at his initial sentencing hearing because he had gone to the emergency room after a car accident; (2) Lasyone suffered from several mental health disorders, including major depressive disorder, bipolar schizoaffective disorder, and post-traumatic stress disorder; and (3) Lasyone failed to appear at the status check hearing due to his mental health disorders, which impaired his thinking and caused him to be frightened.

Lasyone did not specify what additional arguments counsel should have asserted at the sentencing hearing. Therefore, Lasyone failed to allege facts that, if true, would demonstrate counsel was deficient or a reasonable probability he would have received a more favorable sentence had counsel presented additional argument at sentencing. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Second, Lasyone claimed trial-level counsel was ineffective for failing to file a sentencing memorandum. In particular, Lasyone claimed counsel should have filed a sentencing memorandum informing the trial-level court that he suffered from significant mental health problems and arguing that he did not breach the plea agreement.

As previously discussed, counsel informed the trial-level court at the sentencing hearing that Lasyone suffered from several mental health disorders, and Lasyone did not specify what additional information should have been presented in a sentencing memorandum. Likewise, Lasyone did not specify what additional arguments counsel should have asserted in a sentencing memorandum to show that Lasyone did not breach the plea agreement. Therefore, Lasyone failed to allege facts that, if true, would demonstrate counsel was deficient or a reasonable probability he would have received a more favorable sentence had counsel filed a sentencing memorandum. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Third, Lasyone claimed trial-level counsel was ineffective for failing to argue that the State waived his breach of the plea agreement in this case because (1) the plea agreement stipulated to sentences in this case and a separate criminal case, and (2) the State did not object to Lasyone being sentenced pursuant to the terms of the plea agreement in the other criminal case.

To support his waiver claim, Lasyone had to allege facts that, if true, would demonstrate the State voluntarily and intentionally relinquished a known right under the plea agreement. *See Burns v. State*, 137 Nev. 494, 496, 495 P.3d 1091, 1097 (2021) (stating “contract principles apply when analyzing a written guilty plea agreement”); *Udevco, Inc. v.*

Wagner, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (recognizing that, under contract law, “[w]aiver is usually defined as the voluntary and intentional relinquishment of a known right” (internal quotation marks omitted)). Lasyone pleaded guilty in this case and in a separate criminal case and entered into two separate plea agreements. Both agreements contained failure-to-appear clauses. Lasyone failed to appear for two hearings in this case, and as a result, the trial-level court determined that the State regained the right to argue for any legal sentence in this case.

Lasyone did not allege that his failures to appear in this case would have constituted a breach of the plea agreement in his other criminal case or that the State regained the right to argue for any legal sentence in his other criminal case as a result of his breach in this case. Therefore, Lasyone failed to demonstrate the State’s failure to object to his sentence in his other criminal case constituted a voluntary and intentional relinquishment of any rights under the plea agreement in this case.

As a result, Lasyone failed to allege facts that, if true, would demonstrate counsel was deficient or a reasonable probability he would have received a more favorable sentence had counsel argued that the State waived his breach of the plea agreement. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.¹

¹Lasyone also argues appellate counsel was ineffective for failing to argue on appeal that the State waived his breach of the plea agreement. Because Lasyone failed to allege facts that demonstrated the State waived his breach of the plea agreement, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing. See *Kirksey v. State*, 112 Nev. 980, 998, 923 P.2d 1102, 1114 (1996).

Fourth, Lasyone claimed trial-level counsel was ineffective for conceding that Lasyone had breached the plea agreement. Counsel's concession was in response to the district court's statement that Lasyone had breached the plea agreement. Lasyone did not indicate how any other response by counsel would have resulted in a different outcome. Therefore, Lasyone failed to allege facts that, if true, would demonstrate a reasonable probability he would have received a more favorable sentence had counsel not conceded the breach. Accordingly, we conclude the district court did not err by denying this claim without first conducting an evidentiary hearing.

Lasyone also argues on appeal that the district court abused its discretion by failing to acknowledge and address the untimeliness of the State's opposition. Lasyone fails to support with relevant authority or cogent argument his claim that the district court was required to take such action. Therefore, we decline to consider this claim. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Finally, Lasyone argues the district court erred because it did not draft its own findings of fact and conclusions of law or announce its findings with sufficient specificity so as to provide the State guidance in drafting a proposed order. In adjudicating a postconviction petition for a writ of habeas corpus, a district court must "draft[] its own findings of fact and conclusions of law or announce[] them to the parties with sufficient specificity to provide guidance to the prevailing party in drafting a proposed order." *Byford v. State*, 123 Nev. 67, 70, 156 P.3d 691, 693 (2007).

Here, the district court held a hearing in which it announced its findings of fact and conclusions of law, denied Lasyone's petition, and requested that the State prepare the order. After review, we conclude the district court made sufficient findings of fact and conclusions of law from

which the State could prepare its proposed order. Therefore, we conclude Lasyone is not entitled to relief on this claim.² Cf. *State v. Greene*, 129 Nev. 559, 565, 307 P.3d 322, 325-26 (2013) (holding a district court erred when it failed to “make any express findings in support of its determination and provided no guidance for the prevailing party”).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jasmin D. Lilly-Spells, District Judge
AMD Law, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²To the extent Lasyone claims the district court’s written findings of fact are not supported by substantial evidence, Lasyone fails to specify which findings he believes are unsupported. Therefore, we conclude Lasyone is not entitled to relief on this claim.